United States Court of Appeals

for the Second Circuit

APPENDIX

76-1438

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B P/S

Docket No. 76-1438

UNITED STATES OF AMERICA,

Appellee,

v.

JAMES MELVIN GREEN,

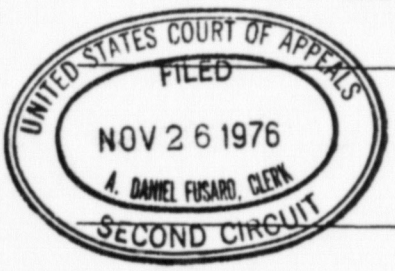
Defendant-Appellant,

and

DEBRA FENNELL GREEN,

Defendant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



APPENDIX

ROBERT B. FISKE, JR.
United States Attorney
for the Southern District
of New York
One St. Andrew's Plaza
New York, New York 10007
791-1923

Attorney for Appellee

GUY MILLER STRUVE
1 Chase Manhattan Plaza
New York, New York 10005
HA 2-3400

Attorney for Defendant-Appellant

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0859

GREEN, JAMES MELVIN

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02

OFFENSES CHARGED

		ORIGINAL COUNTS
18:2113 (a)	Bank robbery.	1, 3, 4
18:2113 (d)	Bank robbery with use of dangerous weapon.	2, 5

9/24

UNITED STATES COURT OF APPEALS
FILED
OCT 14 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

II. KEY DATES & INTERVALS

ARREST OR: 3-12-76

INDICTMENT: 5-28-76

ARRAIGNMENT

TRIAL

SENTENCE

STRATE

ATTORNEYS

T. Gorman Reilly
791-1923

DATE	PROCEEDINGS
5-28-76	Filed indictment.
6-18-76	Case assigned to Judge Ward superseding 76 Cr 267. Brieant, J. Filed sealed & impounded envelope not to be opened until further order of this court or a higher court...Ward,J (Filed in cashiers vault)
6-21-76	Filed Govt's requests to charge
6-21-76	Filed govt's memoradum of law in opposition to deft's motions to suppress the out of Court & in Court identifications of them by bank employee eye witnesses
6-8-76	Deft W/A/P plead N/G P.T.hrgs re: ID & suppression set for June 9,1976 at 2P.M. DEft cont'd remanded...Ward,J.
6-9-76	Deft W/A/P Robert Mitchell substituted for Jos. B. Hirschfield as atty for Jas. M GReen .BAil cont'd. DEft remanded in lieu of bail suppression hrg. & trial set for 6-14-76...Ward,J. PTC held
6-14-76	DEft W/A/P suppression hearing
6-15-76	suppression hearing cont'd- Daniels
6-16-76	Trial begins

DATE	IV. PROCEEDINGS continued (DOCUMENT NO.) PAGE TWO	V. EXCLUDABLE DELAY
6-17-76	Trial cont'd	
6-18-76	Trial concluded Verdict DEft guilty on all cts PSI ordered Sentence date 8-3-76 at 9:30 A.M. DEft remanded...Ward,J.	
6-21-76	Filed CJA form #20 appointing Joseph B. Hirschfield as atty for deft;	
6-21-76	Filed CJA form #20 copy 2 authorizing payment for Joseph B. Hirschfield as atty for deft dated 6-16-76....Ward,J.	
7-2-76	Filed deft's motion for retrial	
7-6-76	Filed deft's memoradum of motion to dismiss indictment pursuant article IV of interstate agreement on detainers	
9-15-76	Fld memo end on motion fld 7-2-76 In as much as the movant has failed to demonstrate that he didnot have sufficient opportunity to consult with counsel both before & during trial & was thereby prejudiced, the motion for retrial is denied So ordered Ward,J. (Entd Prose)	
9-14-76	DEft (atty present) FLD JUDGMENT & COMMITMENT he defg is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY (20) YEARS on ct 1 TWENTY (20) YEARS ON CT 3 & TWENTY YEARS (20) on ct 4. Said sentences on ct 3 & 4 to run concurrently with the sentence imposed on ct 1. Imposition of Sentence on ct 2 is Suspended & deft is placed on probation forma period of ONE (1) DAY; Impositionof Sentence on ct 5 is suspended & deft is placed on probation for a period of ONE (1) DAY Said periods of probation to be consecutive to term of imprisonment imposed on cts 1,3 & 4 ubject to the standing probation order of this Court. DEft to receive credit for time served in Federal custody in connection with sentence here imposed. REMANDED pending appeal ....Ward,J.....issued copies	
9-21-76	Filed transcript of record of proceedings, dated June 14-15-16-17, 1976	
9-24-76	Fld notice of appeal from judgment entered 9-14-76 (copy to U.S. Atty mailed copy to deft	
10-14-76	Filed transcript of proceedings dated Sept. 14-76.	

B

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A3

JUDGE WARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

JAMES MELVIN GREEN
and DEBRA FENNELL GREEN,

Defendants.

INDICTMENT

S 76 Cr.

MAY 26 1976
S. D. OF N. Y.

COUNT ONE

The Grand Jury charges:

On or about the 25th day of February, 1976, in the Southern District of New York, JAMES MELVIN GREEN and DEBRA FENNELL GREEN, the defendants, unlawfully, wilfully and knowingly, by force, violence and intimidation, did take and attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody, control, management and possession of Manufacturers Hanover Trust Company, 1135 Avenue of the Americas, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT TWO

The Grand Jury further charges:

On or about the 25th day of February, 1976, in the Southern District of New York, JAMES MELVIN GREEN and DEBRA FENNELL GREEN, the defendants, in committing and attempting to commit the offense charged in Count One of this Indictment, did assault and put in jeopardy the life of another person by the use of a dangerous weapon and device, to wit, a handgun.

(Title 18, United States Code, Sections 2113(d) and 2.)

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
BY
Deputy Clerk

TGR:ds
M-1652

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of March, 1976, in the Southern District of New York, JAMES MELVIN GREEN and DEBRA FENNELL GREEN, the defendants, unlawfully, wilfully and knowingly, by force, violence and intimidation, did attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody, control, management and possession of First National City Bank, 40 West 57th Street, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 8th day of March, 1976, in the Southern District of New York, JAMES MELVIN GREEN and DEBRA FENNELL GREEN, the defendants, unlawfully, wilfully and knowingly, by force, violence and intimidation, did take and attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody, control, management and possession of National Bank of North America, 515 Seventh Avenue, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 8th day of March, 1976, in the Southern District of New York, JAMES MELVIN GREEN and DEBRA FENNELL GREEN, the defendants, in committing and attempting to commit the offense charged in Count Four of this Indictment, did assault and put in jeopardy

TGH:ds
M-1652

the life of another person by the use of a dangerous weapon or device, to wit, a handgun.

(Title 18, United States Code, Sections 2113(d) and 2.)

James McBride
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

6/14/72 Deft. [illegible] w/a/p
[illegible] imprisonment for a term of
20 yrs on Ct. 1; 20 yrs on Ct. 3 & 20 yrs.
on Ct 4. Said sentences on Cts. 3+4
to run concurrently with sentence
imposed on Ct. 1.
Y.A.S. on Ct. 2 - Probation 1 day; Y.A.S.
on Ct. 5 - Probation 1 day. Said periods
of probation to be consecutive to
term of imprisonment imposed on
Cts. 1, 3 + 4, subject to the standing
probation order of this Court.
Credit for time served in Federal
Custody in connection with the
sentence here imposed.
~~Right to appeal in forma pauperis~~.
Remanded pending appeal. Ward, J.

Sept. 16, 1976 Deft. D. F. Green w/a/p sentenced
on Cts 3 + 4 for treatment + supervision purs. to 18 USC ~~Sec~~ 5010(b)
until discharged by US Parole
Commission as provided by 18 USC 5017.
Ct. 5. Y.A.S. + prob. 1 da. following re-
release from confinement. Credit for
time already served. Cts 1 + 2 dismissed on motion of Govt. Ward, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. ROBERT J. WARD, D.J., and a Jury
vs.	
JAMES MELVIN GREEN and DEBRA FENNELL GREEN,	76 CRIM. 517
Defendants.	

U.S. DISTRICT COURT FILED SEP 21 1976 S.D. OF N.Y.

New York, June 14,15, 1976

STENOGRAPHER'S MINUTES

mcs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
vs.	:	76 Cr. 517
JAMES MELVIN GREEN and DEBRA FENNELL GREEN,	:	
Defendants.	:	

Before:

HON. ROBERT J. WARD,
District Judge.

New York, June 14, 1976;
10.20 o'clock a.m.
(Room 518)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York;
BY: J. GORMAN REILLY, Esq.,
Assistant United States Attorney.

ROBERT MITCHELL, Esq.,
Attorney for Defendant
Mames Melvin Green.

ROLAND THAU, Esq.,
Attorney for Defendant
Debra Fennell Green.

THE COURT: Miss Kruger, would you call the case which was set down for trial this morning with the understanding that prior to the selection of the jury there would be a hearing.

THE CLERK: United States versus James Melvin Green and Debra Fennell Green.

THE COURT: Is the Government ready for the hearing?

MR. REILLY: Yes, your Honor, the Government is ready for the hearing.

THE COURT: Are the defendants ready for the hearing?

MR. MITCHELL: The defendant James Melvin Green is ready.

MR. THAU: And the defendant Debra Green also.

THE COURT: Very well, we will proceed now with the hearing or hearings. They will concern themselves with, as I understand it, two subjects, No. 1 the identifications made by various tellers primarily of the defendants and, No. 2, the legality of certain seizures which were made in this case.

The Court is prepared to hear counsel and then to take testimony.

MR. REILLY: Your Honor, the Government is

prepared and would prefer to proceed with the photo identification aspects of the hearing. This might result in or two witnesses being called back twice. These are FBI agents. For the sake of continuity I think it is preferable to do it that way.

My first witness would be FBI Agent Ed Roach.

- -

E D W A R D J. R O A C H , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Roach, where are you employed?

A I'm employed by the Federal Bureau of Investigation.

Q To what squad are you assigned?

A I am assigned to the Bank Robbery Squad.

Q Are you aware of a reported bank robbery at the Manufacturers Hanover Trust Company at Sixth Avenue and 46th Street on February 25, 1976?

A Yes, I am.

Q Were you assigned as case agent to that bank robbery?

A Yes, I was.

Q Did there come a time when you went to the Manufacturers Hanover Trust Company at that address with a spread of photographs of a male suspect?

A Yes, there was.

Q Do you recall what date that was?

A No, I don't.

Q Did you make a report that would refresh your recoolection in that regard?

A Yes, I did.

Q Do you have that with you?

A You have it.

MR. REILLY: I will withdraw that.

Q I will show you something that will be helpful.

I'm showing you what I have marked as 3909, 10 and 11 and I will ask if that in any way refreshes your recollection as to the date you went to the court?

A Yes, this is a typewritten transcript of the statements I took that day. I see it as the March 5 -- typewritten transcript of the statements that I took on March 5, 1976.

Q What did you do on March 5?

A I showed a group of photographs to three bank employees.

Q Where did you show it to them?

A At the bank, in the rear of the bank and in the bank's conference room.

Q Just tell us what happened. Did you show them all together or did you show them individually?

A I believe when I entered the bank my intent --

THE COURT: Not what your intent was. Tell us what you did.

A I entered the bank to show a spread of photographs, a group of photographs to three separate bank employees. I did this taking them individually. I don't recall the exact order of the employees, but I do recall their names. All three were employees on duty today of the February 25 robbery.

Q What were the names of the three individual bank employees?

A Eugene White, Charlene Churilla and Celinda Rivera.

Q Would you tell us the manner in which you showed the photographs to these individuals?

A I took these individuals one at a time to this conference room and told them that I was going to display to them a group of photographs and they should, after carefully reviewing this group of photographs, if they could, pick anyone that they felt in this group of photo-

graphs that was identical to an individual that committed the robbery at that bank on February 25, 1976.

Q With respect to Eugene White, do you recall what transpired when you showed the photographs to him?

A I spread this group of photographs in front of him in no particular order and after glancing at all the group together for just a moment he selected the photograph that he said was identical to the individual who robbed that bank on February 25.

MR. REILLY: Your Honor, dan we have an off the record discussion a moment? I notice some FBI agents have come in. Does defense counsel wish to have them outside?

MR. MITCHELL: Yes.

MR. REILLY: One of them is Mr. Higgins.

(Pause.)

THE COURT: I suggest that you use the jury room as a witness room. As you know, there is no witness room in this wing.

MR. REILLY: Yes, your Honor. There are some witnesses there already.

MR. THAU: I notice apparently lay witnesses or persons just walked in. Perhaps they might be witnesses also.

MR. REILLY: That is correct. You go to the witness room.

Anyone not a witness in the case will remain in the courtroom. All witnesses will remain in the jury room.

I believe your testimony up to this point was that Mr. White looked at the photo spread and selected something or someone.

THE WITNESS: Yes, he did.

THE COURT: What exactly happened?

MR. REILLY: I'm going to mark as Hearing Exhibit No. 1 a group of photographs, nine photographs.

(Government's Exhibit 1 was marked for identification.)

xx MR. REILLY: I am going to show them to the witness.

THE COURT: Agent Roach, have you ever seen those photographs before?

THE WITNESS: Yes, I have, your Honor.

THE COURT: Tell us when?

THE WITNESS: Well, I put together this group of photographs in my office for the purpose in mind to put together a fair group of photographs that would be representative of a young Negro male, early 20's, short

hair, knowing that I had a photograph of the defendant and I interspersed this photograph with this group of photographs that I put together in my office and I numbered them on the rear 1 through 9. It so happens that on the back of the defendant's photograph I noted his photograph No. 4.

When I spread this group out on the conference table at the bank, the particular witness, Eugene White, an employee of the victim bank, after he pushed them around for a moment went directly to the photograph of the defendant and I had him sign and date the rear of the photograph, the back of the photograph.

Q At that time afer he did that did you prepare a statement for his signature?

A Yes, I did, just a brief handwritten statement that I wrote out saying that he had reviewed this group of photographs and selected No. 4 as being identical to the individual who robbed him that day.

Q Did you show that statement to him?

A Yes, I did. He signed it and dated it.

Q Did he read the statement before signing?

A Yes.

Q I'm showing you H-2; is that right?

A Yes, it is.

Q With respect to Charlene Churilla, what procedure did you follow with respect to the photograph that day?

A The same procedure. I followed the same procedure with all the witnesses.

Q Do you recall what she did on being shown that spread of photographs?

A Immediately upon placing the group of photographs in front of her she selected photograph No. 4 without any hesitation whatsoever.

Q Did you prepare a statement incorporating that fact?

A Yes.

Q Did you show it to her?

A Yes.

Q Did she sign it?

A Yes, she did.

Q Is H-3 that statement?

A Yes, it is.

Q Finally, with respect to Celinda Rivera, did you follow a similar procedure with her?

A Yes.

Q Tell us what she did to your recollection after being shown those photographs?

A She studied the group of photographs for approximately a minute, pushing several out of the way, out of her line of vision. I imagine she -- she eliminated several of them, studied it for a minute and then selected No. 4.

Q Did you prepare a statement after that?

A Yes, I did.

Q Did you show it to her?

A Yes, she saw it and she read it.

Q Do you know whether she signed it or not?

A She did sign it, yes.

Q Is H-4 that statement?

A Yes, it is.

Q Did there come a time when you returned to the bank after March 5, 1976?

A Yes, there was.

Q Do you recall the date?

A Not offhand, no.

Q Do you know whether or not the defendants James and Debra Green had been arrested at the time you went to the bank, the Manufacturers Hanover Trust Company, a second time?

A Yes, they had been arrested.

Q Do you know their arrest date?

A March 12.

Q Do you have any recollection of how soon after March 12 you went to the Manufacturers Bank?

A Within a day or two days.

Q Are you positive of that?

A No, I'm not.

Q Let me show you 3505 and 3507 and see if this is of any assistance in helping you to remember what date you went there?

MR. THAU: For purposes of this hearing I think it is satisfactory to me if Mr. Rach says he went there a day or two later. It occurs to me that there are reports which may refresh his recollection as to other aspects of what he may have to testify to.

MR. REILLY: May I assist Mr. Thau in this regard and just indicate the very final line of 3505, which appears to be a dateline.

A 4/14/76.

Q Is that when you went to the bank?

A Yes, it is.

Q That is on April 14, 1976.

What happened at the bank?

A At that time I showed a group of photographs, a group of approximately seven photographs depicting

Negro females, of which one of them -- of which one of the photographs is a picture of the female defendant in this case at that time.

Q To whom did you show the photographs?

A To two of the same witnesses that I showed the male group of photographs to briefly.

Q Which witnessesd were they?

A That was Charlen Churilla and Celinda Rivera.

Q What procedure did you follow?

A The same procedure.

Q Did you interview them individually or together?

A Individually.

Q Do you have that spread of photographs with you today?

A Yes, I do.

MR. REILLY: I am marking the spread of photographs as H-5.

(Government's Exhibits H2- through H-5 were marked for identification.)

Q I am showing you H-5. Is this the spread of photographs that you showed that day of the females?

A Yes, it is.

Q First of all, how many photographs are there?

A I believe there are seven photographs in this

group.

Q Count them?

A There are seven photographs in this group.

Q First with respect to Charlene Churilla, would you dscribe what happened when you showed those photographs to her?

A Miss Churillas was able to go directly to the photograph of the female defendant in this case and identify the photograph as being identical to the female participant in the robbery of February 25, 1 976.

Q Was there any hesitation with respect to her selection of the photograph of Debra Green?

A No.

Q You also interviewed Celinda Rivera as well; is that correct?

A Yes, I did.

Q Will you describe what happened when you showed her the spread of photographs which have been marked as H-5?

A Mrs. Rivera repeated her process of elimination, taking a few minutes to do this. She narrowed the group of seven down to 3 and then selected the photograph of the female defendant.

Q Did you prepare a statement after you showed

the photographs to the two ladies?

A Yes, I did.

Q Do you have those with you?

A Yes, I do.

MR. REILLY: I will have marked as H-6 a statement commencing with the words "I, Charlene Churilla," and as H-7 a statement commencing with the words "I, Celinda Rivera."

(Government's Exhibits H-6 and H-7 were marked for identification.)

Q Did you show these statements to the two eye-witnesses?

A Yes, they read their statements and signed them and dated them.

Q And H-6 and H-7 are the two statements signed by the ladies?

A They are.

Q At the time that you went to the bank on April 14, 1976 did you have any bank surveillance photographs?

A Yes, I did.

Q Did you have those surveillance photographs with you on March 5, the first day that you went to the bank and showed the photographs of the nine males, to

your recollection?

A I don't -- to the best of my recollection, yes, I did.

Q Do you have any recollection of showing them to the tellers on that occasion?

A Yes.

MR. THAU: Which occasion is that?

Q That is the first occasion.

A If I had them with me, yes, I would have shown them.

Q Do you recall if you had them?

A I don't recall if I had them. I know I had them the second occasion. I had them by them.

Q With respect to that second occasion on April 14, 1976, you had them with you; is that correct?

A Yes.

Q Do you recall whether you showed those surveillance photographs to the bank employees Rivera and Churilla on that day?

A Yes, I did.

Q With respect to each of them individually, do you recall whether you showed those bank surveillance photographs before or after you showed the photo spreads that we have already inspected?

A No, I don't recall if I did before or after.

Q I show you what I have marked as H-8 and H-9 for identification, which appear to be two black and white photographs, and I will ask you, are these the photographs that you had with you?

A Yes, they are.

(Government's Exhibits H-8 and H-9 were marked for identification.)

Q And did you ask Miss Churilla anything with respect to any of those photographs?

A I don't recall.

MR. THAU: I don't know whether Mr. Reilly is talking about the first visit or the second.

MR. REILLY: On either visit. This is the second visit, your Honor.

Q Do you recall whether you asked her to identify in any way whether these were the bank robbers?

A I know I had them the second time. I know I showed them to her. I do not recall her reaction. I took no statement attesting to anything.

THE COURT: Did you have her write anything on the reverse side of the photographs?

THE WITNESS: No, your Honor.

Q Have you in the course of your duties as an FBI

agent in bank robbery matters had the occasion to view other bank surveillance photographs?

A Yes.

Q How many years have you been on the bank robbery squad?

A Three years.

Q Have you observed numerous or very few of these surveillance photographs?

A Numerous.

Q In excess of 50 different bank robbery --

A Oh, yes, definitely.

Q In excess of 100?

A Yes, definitely.

Q How would you characterize the qualify ot these photographs?

MR. MITCHELL: Objection.

MR. THAU: Objection.

THE COURT: Sustained.

MR. REILLY: Your Honor, I have no further questions. I would like to move into evidence at this hearing Exhibits H-1 through H-9, the photos.

MR. MITCHELL: No objection.

THE COURT: Any objection, Mr. Thau?

MR. THAU: No, your Honor.

THE COURT: H-1 through H- 9 for identification are received.

(Government's Exhibits H-1 through H-9 were received in evidence.)

CROSS EXAMINATION

BY MR. MITCHELL:

Q When you showed them this spread did you have an indication that the defendant had been in custody at the time with the number of his arrest and everything referring to the defendant Melvin Green?

A I think most of them. They are all police photographs.

Q You didn't block out the statement on there that it was a police photograph?

A I didn't do it on any of them.

Q You didn't block it out on that?

A No.

Q Can you tell me the names of the various individuals on these photographs, the other eight?

A No.

Q Can you tell me the weight?

A No.

Q Did you ever run a Wade lineup hearing?

A Yes.

Q Are you familiar with the fact that they are supposed to be of the same height and the same weight?

A In the lineup?

Q In the lineup.

A Yes.

Q But this was not a lineup?

A No, it wasn't.

Q How long did Mr. White take before he made an identification?

THE COURT: On which occasion?

Wait a minute, Mr. White was only there on one occasion.

MR. REILLY: Yes, only on one occasion.

THE COURT: How long did he take to select the photograph that he selected?

THE WITNESS: Just a short period of time, a few minutes for Mr. White.

Q Aren't you supposed to clock the time the way you do with a Wade hearing and see how long it takes before the persons makes the identification?

A No.

Q You've never done that?

A No.

Q Do you ever clock the time at a Wade hearing

where an attorney is present?

A I have seen it done.

Q You've seen it done?

A In a lineup.

Q But you didn't do it in this case?

A This was not a lineup.

Q YOu didn't time it?

A No, I didn't.

Q Didn't you realize that the longer it takes --

MR. REILLY: Objection.

MR. MITCHELL: Withdrawn.

THE COURT: Do you customarily time the interval between showing a photograph and the identification of the photograph?

THE WITNESS: No, your Honor.

THE COURT: In this case your recollection is that the interval was approximately how long?

THE WITNFSS: Just a few minutes, very brief.

THE COURT: When you say a few minutes do you mean a minute or two or do you mean five or ten?

THE WITNESS: Two or three minutes.

Q Was it the same on each witness, though, or did it vary?

A Celinda Rivera was the one who took the most

time, still under five minutes.

THE COURT: How about Charlene Churilla?

THE WITNESS: Almost immedite, your Honor.

THE COURT: In other words, she was the quickest, Mr. White was two or three minutes and Celinda Rivera took almost five minutes?

THE WITNESS: Yes, to the best of my recollection.

Q Were you aware before you submitted the lineup photographs to these three witnesses of their position in relation to the proposed bank robber, in other words, where they were, what sort of view they had?

A The witnesses?

Q Yes.

A No, I had understood from --

MR. MITCHELL: Objection as to what he understood, your Honor.

THE WITNESS: I had been told --

THE COURT: All right.

THE WITNESS: --that these were three witnesses, tellers on duty.

Q You don't know whether they had a side view or a back view?

A No, I don't. With the exception, I believe,

of Churilla, the Churilla girl. I beleve she was the victim.

Q Now, you showed the Churilla girl the large photographs; is that right?

A The surveillance photographs?

Q Yes.

A I believe they all had a chance to look at the survillance photographs, if I had them with me. I know I had them by the second trip to the bank.

Q After the defendants were arrested were you present when counsel was assigned?

A Yes, I was.

Q Did you communicate with counsel with regard to a lineup, a Wade hearing?

A No, I didn't.

Q Did you indicate to counsel that you had shown photographs of the defendant, among others?

A It was in a complaint that the counsel received a copy of at the time of the arraignment.

MR. MITCHELL: I have no further questions.

MR. THAU: Do I understand that at this time we are only going into the Wade aspect of this since Special Agent Roach was one of the arresting agents?

THE WITNESS: I was not.

MR. REILLY: He subsequently was available in connection with the consent search. As I indicated before, I would like to call Mr. Roach back early this afternoon to deal with that.

MR. THAU: All right. In that case I will limit myself to the identification issue.

CROSS EXAMINATION

XX BY MR. THAU:

Q Do I understand it that about a month after my client's arrest you went back to the bank equipped with surveillance shots and a photo spread of her and six other young ladies?

A Yes.

Q Let me see the surveillance shots you had with you at that time.

Is this the photo spread?

A Yes, it is.

Q Is there among these ladies whose photos you had one Joanne Chesimard? Is there? Take a look.

To begin with, you know who Joanne Chesimard is, don't you?

A Yes, I do.

Q Take a look and see if her picture is in there. I know that you are peeling a label off the front of the

photo. Do you know Joanne Chesimard's face when you see it or do you have to peel a label to see if her name is underneath?

THE WITNESS: I'm not familiar with her.

Q Peel away, then?

A I don't think she's in this group.

Q Do you have a list of the identities of the persons whose photos are in that spread?

A No, I don't.

MR. THAU: I think Mr. Reilly has.

May I see it?

Q While Mr. Reilly is looking for that, do you know whether at any time Joanne Chesimard's photo was shown any witness to whom a photo of Debra Green was shown?

A No, I don't think so. I'm not aware of a photograph of Joanne Chesimard ever being displayed to any witness in this particular bank robbery.

Q How about in any of the subsequent alleged bank robberies committed by Debra Green?

MR. REILLY: Objection.

A I wouldn't know.

Q Had you been at the bank the day of the robbery?

A No, I wasn't.

Q Had you before you went there on the two occasions you told us familiarized yourself with the reports filed by your colleagues who had interviewed the witnesses the day or the day after the robbery?

A Yes, I did.

Q At that time did you acquaint yourself with how those witnesses had described the female in terms of her appearance?

A I discussed it with the agents who responded to that robbery. They didn't have their papers prepared at that time.

Q Did those agents go back to the reports to refresh your recollection concerning what these witnesses had said concerning the female's appearance?

A I discussed with the agents who responded to the robbery. They didn't have their reports prepared at that time.

Q Did those agents go back to the reports to refresh your recollection concerning what these witnesses had said concerning the female's appearance?

MR. REILLY: Objection.

MR. THAU: In order to construct a fair photo spread, it is obvious that if one of the witnesses said that the woman had an enormous mole on her nose, it would

be necessary to either cover the mole in her picture or else have pictures with moles and let the witnesses --

THE COURT: Let me hear the question read.

(Question read.)

THE COURT: If you know.

THE WITNESS: No, nothing specific, just in general. She was a young Negro female accompanied by a young male Negro. That in itself is unusual.

Q A female accompanied by a male is unusual?

A As a bank robbery team it is.

Q You are assigned to New York City?

A Yes.

Q You are aware, are you not, that in this day and age most younger black persons where their hair naturally kinky rather than straightened as was more fashionable years ago, aren't you? Are you or aren't you?

A I see so many different styles.

Q Has that escaped your attention. that young black people generally wear their hair naturally kinky nowadays? Are you blind to this?

THE COURT: Sustained, argumentative.

Q In any event, you knew, did you not, that Miss Churilla had given a description of the female's hair

as black and straightened, just about shoulder length, and you were aware of that, weren't you?

To refresh your recollection, perhaps I will show you a report dated 3/2/76 and call your attention to page 3 -- I'm sorry -- page 2 of it, a description of the female.

Do you see it?

A Yes.

Q Would you agree with me that with respect to the seven-photo spread you showed these ladies every woman but this defendant is bareheaded and every single one of them wears short, kinky, untreated or unstraightened hair; would you agree with that?

A Yes, I would.

Q Would you in addition agree that the defendant's photo shows her with a scarf or wrap around her hair?

A Yes, it does.

Q And she is the only one of the seven ladies who has that kind of headpiece; is that right?

A Yes, it is.

Q And this was done presumably to conceal her hairdo: is that right?

A Yes, I imagine so. I believe it was at that time.

Q Who took the photo?

A That photograph was taken by an FBI technician.

Q Were you present?

A Yes.

Q Did you direct that the headpiece be placed on her head?

A No, I was present in the area.

Q Who made the decision to use that headpiece?

A The agents who were there at the time.

Q Why?

A They felt without the headpiece her hair was so short that she wouldn't be discernible as to be male or female.

Q So short?

A Sho9t at that time.

Q So it was in order to identify her sex that you put a headpiece on her head, is that right; so the headpiece would say woman, is that right, or would bespeak woman?

A Yes.

Q And of course if you had put a flowered hat on her head it would have been even eloquent of the fact that a woman stood beneath that hat?

A Yes, but she wasn't wearing a flowered hat.

She was wearing this particular scarf.

Q I understand that. And it was fear on your part that anyone looking at this photo might think that it was a photo of a man; is that right?

A It might cause some confusion if we left the scarf on that she had on at the time of her arrest.

Q So as to make it plain that she was a woman?

A Also to give it exact -- her appearance at the time of her arrest.

Q Her arrest but not necessarily at the time of the bank robbery?

A We didn't have those garments.

Q So that you contrived, did you not, a costume, so to speak, in order to convince the viewer of this spread that this particular person was a woman; isn't that a fair statement of what you just said the reason was for the headpiece?

A No, it is not.

MR. REILLY: I object to it as being argumentative.

THE COURT: It is argumentative. He has responded in the negative.

I'll let it stand.

Q Now, with respect to H-8 and H-9, which are the

surveillance photos taken at the bank on February 25, these two photos purport to depict these two defendants at or near the teller's window; is that right?

A Yes.

Q And when is the first time that you showed these photos to any bank empl yee?

A If I had them with me March 5 then I would have shown them then. I'm sure I had them with me and showed them on May 14th.

Q Did you show them photos before showing the spread or after or during it?

A April 14th.

Q When you went back on April 14 did you show these two surveillance shots before you showed the spread?

A I don't recall if I showed them before or after.

Q That would have been the practice?

A That is normally my procedure.

Q You were there principally to see, were you not, whether these tellers or these bank employees could pick out what you regarded to be a fair spread one of the robbers; is that right?

A Yes.

Q Would you agree with me that H-8 is such a photo as shows the right profile of the female at the teller's window?

A Yes, it eoes.

Q And if you knew this person, if this person were a friend of yours or a member of your family, you'd recognize such a person from the photo, wouldn't you?

A Yes, I would.

Q And therefore do I understand, sir, that you showed this spread to a bank official together with an identifiable photo of the person who had been at the window on February 25; is that what you did?

A Not together, I wouldn't.

Q Well, you showed the surveillance shot to the teller before you showed the spread; is that right?

A That is my practice.

Q Has it ever occurred to you that it is an awful practice?

A No.

MR. REILLY: Objection.

MR. THAU: May I withdraw that?

Q Did it ever dawn on you, Mr. Roach?

MR. REILLY: Objection --

MR. THAU: Let me finish the question on this

kind of an issue. It is a very vital question, your Honor.

THE COURT: Ask your question.

MR. THAU: Sure.

Q Did it ever dawn on you, Mr. Roach, that showing the surveillance photo first, in which there is an identifiable face, might likely as not cause the teller to then pick out of the spread not the person that the teller remembered from way back when, but the person whom the teller recognizes on the surveillance shot; that never dawned on you?

MR. REILLY: Objection. That is argumentative.

THE COURT: It is.

A Yes.

THE COURT: Strike the answer.

He said yes, but strike it.

Q You wanted a fair identification; is that right?

A Yes.

Q You wanted to test the teller's memory of what she had seen two months before, is that right, or almost two months before?

A I suppose it is a test.

Q And in order to better do that, do I understand it correctly that you showed that teller a surveillance photo of the person whom she would eventually pick out of that spread of seven; is that right?

A That is my practice. That is our stand operating procedure.

Q How long have you been an FBI agent?

A Seven years.

Q And, that is, in New York?

A Four years.

Q How long have you been with the Bank Robbery Squad?

A Three years.

Q What unit or squad or detail were you on before?

A Trucks?

Q Trucks?

A Yes.

Q Before that?

A I was assigned to a -- you mean in the New York Divison or --

Q Anyone in your whole career as an FBI agent?

A Prior to being assigned to the bank robbery squad in the New York office I was assigned to the Inter-

state Transportation of Stolen Property Squad.

Q And before that?

A And before that I was in the Detroit office assigned to the Truck Hijacking Squad in Detroit.

Prior to that I was stationed In Louisville, Kentucky where I was assigned to mostly deserter matters at Fort Knox and some --

Q Subversive activities?

A No, I never worked any subversive activities.

Q With respect to the seven photos, were the tapes as we see them now on those photos when you showed thm?

A No, I put them on.

Q Before you showed them or after?

A Yes.

Q Before?

A Yes.

THE COURT: So the record is clear, the seven photos are here, Exhibit 5 in evidence.

MR. THAU: Yes, your Honor.

Q At any time when you were showing these photos did these witnesses hold these photos in their hand or were they laying on the table or on a surface?

A They were laying on the table.

Q Some time prior to that when the three witnesses

had picked out James Melvin Green, did you inform these witnesses what the name of the man was whose picture they picked out?

A Yes. For the male photographs?

Q Yes.

A I don't think so. No, they had not been arrested at that time.

Q You knew whose picture had been picked out, didn't you?

A Yes.

Q This was a mug shot of James Green from another occasion?

A Yes.

Q You knew who the man was, whether he was arrested or not?

A I knew who he was, but I don't believe I told the bank employees.

Q Is his name on the back of it?

THE COURT: Did you show the back of the photos to the witnesses when they picked out the defendant?

THE WITNESS: Not when they picked out, but they would have seen the name when they signed it.

Q By the way, with respect to Debra Greene's photo, the one shown later to these bank employees, did you tell

them whose photo this was?

A After they selected it.

Q You are sure you didn't tell them before?

A Of course not.

Q What does that tape cover, by the way, the one on Debra's picture?

A I beleive it covers -- that is the arrest photograph taken at the FBI office the dayof her arrest, so I taped that over and I taped the rest of them so they would all be equally taped.

Q It doesn't cover anything?

A It covers, probably, her nameplate in front of it.

THE COURT: In any event, when you showed the seven photographs which compriseHearing Exhibit 5, to the bank tellers, the photos were all covered with this tape?

THE WITNESS: Yes, they were.

MR. THAU: May I just look at these statements, your Honor, I think that will be the end of my examination on that issue.

THE COURT: You are looking at the statement and while you are doing that I would like to look at all the photographs that are in evidence.

(Pause.)

Q Who hand-wrote those statements?

A I did.

Q Did you ask the witnesses to handwrite their own statements?

A No.

Q Is that against regulations or --

A It is my practice to always write the statements out.

Q So that the statements contain more closely what you wish it to contain rather than, perhaps, what the witness were to write?

MR. REILLY: Objection.

THE COURT: Sustained.

MR. REILLY: I ask the witness not to answer when I rise.

THE COURT: Yes.

MR. THAU: Does your Honor wish to see these statements?

THE WITNESS: Yes, I'll look those over also.

Q The first time you exhibited any photo of my client to any bank official came considerably after any arrest; is that right?

A Yes, it was.

Q And it is clear, is it not, that the witnesses

on the 14th of April had a chance to observe the surveillance shots before observing the photo spreads based on your practice?

MR. REILLY: Objection, your Honor.

THE COURT: He can say yes or no or give an explanation, as he sees fit. I will hear whatever response the agent wishes to make.

A That is my practice, but I don't recall if they saw them this particular time.

MR. THAU: Thank you.

MR. REILLY: I have no further questions.

(Witness excused.)

MR. REILLY: I would like to call the next witness, Charlene Churilla.

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C H A R L E E N C H U R I L L A , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Where are you employed, Miss Churilla?

A Manufacturers Hanover Trust.

Q What location is that?

A 1185 Avenue of the Americas.

Q What street is that on?

A Sixth Avenue and 47th Street.

Q Were you so employed there on February 25, 1976.

A Yes, sir.

Q Do you recall being the subject of a holdup on that date?

A Yes, sir.

Q About what time of day was it, if you recall?

A Around 11.30, 11.35.

Q Where were you stationed?

A At the first station by the revolving doors.

Q Do you recall the lighting conditions at that time?

A It was in the morning and it was a fairly clear

day. The draperies we have are very thin, so it was pretty good.

Q Are there overhead lights?

A Yes, sir.

Q Were they on?

A Yes.

Q Did there come a time when somebody approached you with a note?

A Yes.

Q And do you recall the description of that individual?

A The person that handed me the note was a woman. I estimated her age to be 23 years old.

Q Do you recall whether she was black, white, Chinese?

A A black woman. I estimate about five foot five and rough 120 pounds.

Q What was the distance between you and that woman at the time she showed you that note?

A Just the counter space, which is two or three feet wide.

Q Do you wear glasses?

A I wear contact lenses.

Q Were you wearing them that day?

A Yes, sir.

Q Was there anyone else with this woman?

A Yes, there was a man there also.

Q When did you first see him?

A Well, after I read the note, which said like --

MR. IHAU: Objection to "something".

THE COURT: Yes, try to indicate to us what the note said to the best of your recollection.

THE WITNESS: Okay.

It said, "We have a gun. Give us 50's and 20's."

Q After you read the note, what did you do?

A After I read the note -- obviously the woman didn't have a gun. I looked at the gun. The man had a gun.

THE COURT: You could see the gun?

THE WITNESS: Yes.

Q What did you do then?

A I pushed my drawers closed and they locked automatically and I pulled my alarm.

Q Did you have any conversation with either of these two individuals during that time?

A At that point then I asked if they had a bag for me to put the money in

Q Were you looking at them at that time?

A Yes, and --

Q Did there come a time when you went down below the counter?

A Yes, sir.

Q Did you ever see the two individuals again after that?

A No, sir.

Q How long a period of time after that did you have these two individuals under observation?

A Between three and four minutes.

Q Do you have a good present recollection of what they looked like?

A Yes, sir.

Q Did there come a time when the FBI interviewed you that day, or somebody --

A Yes.

Q -- some law enforcement agency interviewed you?

A Yes.

Q Did they ask you for a description of the individuals?

A Yes.

Q Were you able to provide them with a description?

A Yes, sir.

Q Subsequent to the day of the bank robbery did an FBI agent come to show you a group of photographs?

A Yes, he did.

Q Do you know that agent's name?

A I don't remember.

Q Did you just see him going out the door?

A Yes, I met him as I was coming in.

Q Does the name Ed Roach mean anything to you?

A Yes, Ed Roach.

Q Did he come to the bank on more than one occasion to show you photographs?

A He came to the bank on, I think, three occasions, two to show me photographs and one he had me sign something.

Q On the first occasion when he showed you some photographs, what photographs were they; do you recall?

A He showed me a series of nine photographs of men.

Q Did he show you any photographs of females on that day?

A No, sir.

Q Did he have any bank surveillance photographs on that day, the first time?

A No.

Q Describe for us how he went about showing them to you?

A Well, we went into our conference room so we wouldn't be disturbed and he explained to me that he had a series of nine photographs that he wanted me to look at and that they weren't in any specific order. He was just going to lay them in front of me and he wanted me, to the best of my knowledge, to pick the man that I saw on the 25th of February.

Q Do you recall what you did?

A Yes. Well, I spread them out and I eliminated them in telling him why it wasn't this person and I came down to the person that I knew who it was, I knew it was this person from the beginning, and I said to him, "This was the man."

Q Did he ask you to do anything with that photograph after you selected it?

A Yes. I signed it on the back of that one and dated. On the other ones, I initialed it.

Q I show you Hearing Exhibit 1 and ask you to look through this series of photographs. Just look through them quickly, take your time. Take as much time as you might need.

A These are the ones that I looked at.

Q Do you recall which photograph you selected?

A No. 4.

Q Is this your signature on the reverse side of No. 4?

A Yes, sir.

Q With respect to the remaining photographs, do you see your initials there?

A Yes.

Q Did the FBI agent make any suggestions as to which photograph you should be more interested in than any others?

A No, none.

Q Did there come a second time when he showed you a group of photographs?

A Yes, sir.

Q And at that time what type of photographs did he show you?

A These were of women, shots similar to these, but they were all women.

Q Explain to me the procedure, as you recall it.

A He did the same thing. He said to me that he was going to show me -- it was nine at that time, too, photographs of women and he wanted me to pick the one that was at my counter on the 25th of February.

A I spread them out again the same way and explained to him why each one that I, you know, checked wouldn't be the person and I identified the one as the woman that was at my window.

Q When you identified that person, did you have any doubt in your mind at that time?

A None.

Q I am showing you Hearing Exhibit 5. I will ask you to look at the full range of photographs.

MR. THAU: I object to its being called the whole range. This witness said --

THE COURT: Strike the words "the whole range."

"I show you these photographs," period.

MR. THAU: I think there were two missing. The witness says here were nine.

THE COURT: Let's find out on cross-examination. She did think there were nine.

Q Have you ever seen those photographs before?

A Yes, these are the ones that I looked at.

Q Do you know how many photographs there are there?

A Seven.

Q Do you have any recollection whether there were any more than the number of photographs that you see

there?

A I don't remember if there were any more. The one that I identified is here.

Q Which one did you identify?

A No. 9, No. 6.

Q No. 6. Does that bear your signature on the reverse side?

A Yes.

Q I call your attention to the fact that on these photographs it appears that only one individual is wearing a kerchief. Did that play any part in your selection of that individual as the person who appeared in the bank on February 25?

A No.

Q Do you recall what the female was wearing on February 25?

A I remember her having a beret on her head, not a scarf.

Q Not a scarf?

A Not a scarf.

Q Do you have any specific recollection of what her hair appeared to be like at the time of the bank robbery?

A How she wore it; is that --

Q How she wore it, the length, the type of hair?

A The same, to about here (indicating), and it was straightened. It wasn't in an Afro or anything (indicating).

MR. THAU: Indicating, your Honor, around the neck.

THE WITNESS: Right.

THE COURT: Shoulder length?

THE WITNESS: Not quite to the shoulder. Right to here, the collarbone (indicating).

THE COURT: Indicating the lower part of the neck.

Q Did Mr. Roach have with him on the second occasion he showed you some photographs a series of what appears to be bank surveillance shots?

A Yes, he did.

Q Do you recall when he showed you those photographs?

A He showed them in total, all of the pictures -- I don't remember how many there were -- after I had looked at the female pictures. But he did -- I did see one of the pictures before I saw the female photographs.

Q How long a period of time did you have to observe that one photograph before you were shown the

female spread?

A I just glanced. He had it in his hand. It was, like, two or three seconds, enough to look at it. We knew that it was our bank picture, and that was it.

Q Did you recognize certain features in the bank?

A Yes, the teller's station and the revolving door.

Q Did the showing of that photograph to you by Mr. Roach help you select any photographs from among the spread?

A No, sir, it was bank shot. That is all it was.

MR. THAU: What is that, a bank shot?

THE WITNESS: Yes.

Q Let me show you Exhibits 8 and 9 and ask you whether either of those photographs was that photograph which you got a short glimpse of prior to being shown the spread of photographs.

A I think it was this one (indicating).

Q Would you look at the number on the back?

A No. 8.

Q Did Mr. Roach ask you to sign a statement as to your identification with respect to the male and female?

A Yes, he did.

Q Di you read it before you signed it?

A Yes.

Q Did you agree with what was in that statement?

A Yes.

MR. REILLY: No further questions.

MR. MITCHELL: May I have the 3500 material on this witness as to her statement describing the holdup people?

MR. REILLY: Your Honor, the Government will make this 3500 material available, although we recognize that there is no obligation to do so under 3500.

I will make all 3500 material available to Mr. Mitchell and Mr. Thau at this time on this hearing.

MR. THAU: Thank you.

(Pause.)

CROSS EXAMINATION

BY MR. MITCHELL:

Q Miss Churilla, on the day of the holdup you were interviewed by the city police as to a description of the man; is that correct?

A Yes, sir.

Q Do you recall the height that you attributed to the holdup man?

A I'm not sure. I would say, I think it was five feet eight inches or five feet nine, something like that.

Q And his age was approximate 24 or 25 and a weight of approximately 145 pounds?

A Yes.

Q You say that you eliminated certain of the male photographs giving a reason each time to the agent; is that right?

A Yes, sir. I didn't look at them in order.

Q I will try to get them in some order for the record. I'm going to show you what has been marked No. 1 of the nine spread and ask you why you eliminated No. 1, if you can recall?

A Well, I might be mistaken, but this gentleman had very, very nappy hair in here, from what I recall, nappy hair, and --

Q In other words, the hair was different?

A That was one of the factors. I can't be specific with you on all of them.

Q No. It was obvious that the hair was different, among one of the things?

A Yes.

Q Take No. 2?

A He was too heavyset, stocky.

Q In other words, he wasn't similar to the holdup man; right?

A Right.

Q Take No. 3?

A His features are also distinguishing, they are so self-identifying that I knew that just by looking at this that it wasn't him. I can't say to you specifically his lips are fuller. The whole --

Q It wasn't similar to the holdup man?

A Yes. It wasn't the man.

MR. REILLY: I think these are words of art that Mr. Mitchell is using.

THE COURT: I'll let him use the words.

Q I show you No. 5.

A This wasn't the man. I just knew that that wasn't the man.

Q Any reason?

A Probably because when the pictures were first laid down to me, as soon as the picture that I had identified was laid before me I was confident that that was the man and I did this for the benefit of eliminating them for the FBI agent.

Q Do you see any reason?

A He was too light complected, I felt.

Q No. 6.

No. 7.

A The whole nose and mouth region was not what I was looking for.

Q No. 8?

A The same with the complexion it was too fair and the nose and mouth area --

Q Features too broad?

A Right.

Q And No. 9?

A He looked more Spanish to me.

MR. MITCHELL: Thank you. I have no further questions.

THE COURT: Mr. Thau.

MR. THAU: Thank you, your Honor.

CROSS EXAMINATION

BY MR. THAU:

Q Miss Churilla, did you describe the female visitor, if you want to call her that, as having straightened hair?

A From what I remembered it was straightened. It wasn't in an Afro.

Q Which of these two surveillance shots did you

see?

A No. 8.

Q You saw No 8?

A Yes.

Q And that shows a profile, does it not?

A Wrong one. That is No. 9. That one is No. 8.

Q That shows a profile, does it not, of the female?

A Yes, sir.

Q And in fact is identifiable if you knew this person, if this were your sister or a friend of yours you could tell who it is?

A If I looked at it close enough, but was just a glance, as I said, that he had our photos in his hand and it was just merely a glance and I knew that these were ours, because that is my bank. But it wasn't a detailed thing where I was able to sit and look at the picture and say who that is, what she looked like.

Q Miss Churilla, were you advised either by the FBI agent or perhaps by Mr. Reilly what the nature and purpose of this hearing we are conducting now would be?

A What the nature of it was?

Q Yes, what the Judge would have to decide at the

end of such a hearing, what issues were to be resolved at a hearing such as this?

A Not really.

Q Were you at all?

A Not really, no.

Q Why do you keep on adding "really"?

A No, I wasn't.

Q I'm not trying to pry?

A No, as far as I remember, I wasn't.

Q Now, Mr. Reilly asked you whether with respect to the photo spread the fact that one woman had something on her head covering it played any part in your picking out that photo, and your answer was no; is that right?

A Yes.

Q You were not consciously aware that that had a role?

A No, I didn't even pay any attention to that.

Q You were aware when you were shown this photo spread, were you not, that your recollection of the woman on February 25 was that she had longer, relatively long straightened hair; is that right?

A Not relatively -- I don't consider this relatively long. You know, it was collar length hair. That was instead of wearing it puffed out into an Afro, it was what

would be considered straightened, came down like this like a page boy effect.

Q Certainly straightened hair the length you just described is considerably longer, wouldn't you agree, than any of the other six hairdos on any of the other ladies; are we agreed on that?

A Yes.

Q So that at least with respect to visible hairdos on the seven photos that were shown you, you were dealing with six women who had hair nothing like your visit on February 25 and one lay about whom you couldn't really say whether her hair was kinky, short or long; is that right?

A Yes.

Q Now, when Agent Roach came to see you on April 14, 1976 with this photo spread of the woman this time, did he tell you that a woman had been arrested who was suspected of having robbed you?

A I don't remember. I couldn't answer you certainly on that.

Q Did you ask any question:

Well, could you find anyone; weren't you curious or concerned?

A There were so many questions that were asked --

I don't remember if I asked it on this day or when he came back the second time, the third time.

Q The third time? What was the purpose of that?

A It seems to me he brought back some small letter photos of our surveillance, photos that we had taken, the larger ones. He had brought us some smaller ones. He had brought them to the branch and I remember at one point him telling me, after I had seen the male's photographs, that he had been arrested, but I don't remember him telling me about anyone else. I know, you know, I couldn't say for certain when he told me.

Q You have no recollection whether he told you, but you cannot exclude the possibility that he did tell you; is that right?

A Right.

Q Did you notice with respect to the seven photos that six of the ladies, not this defendant, are more aged looking, not the women but the photos themselves?

A No.

Q They are faded and sort of scuffed?

A No.

Q If you look at the defendant's photo, it is a fresh contact, glossy?

A I didn't notice it.

Q Do you notice it now, however? Do you notice a distinctive difference, such a difference as you might know from family photos, some of which old ones might be softened and yellowish?

A I have never looked --

Q I ask you to look at it now?

A I never looked at these kinds of photographs before, so I can't speak for these kinds of photographs. I can't say. I didn't notice when I looked at them.

Q Did you notice it now?

A I can't tell whether there is any difference, frankly.

Q Did Agent Roach or any other FBI agent ever come to you with a spread of photos which did not include the one which you identified on April 14th?

A No, sir.

Q Your recollection of the photo, the surveillance photo which you showed or which was shown on April 14, was that it was a back photo; is that right?

A Yes.

Q In fact, it shows very visibly the right profile of the female, doesn't it?

A Y

Q Is that right?

A Yes.

Q Who was with you in that room where this photo spread was shown you, Miss Churilla?

A Just Mr. Roach.

Q Did he take your written statement that same day?

A Yes, sir.

Q When Mr. Reilly interrogated you on how long you had had a chance to observe your two visitors on February 25, you sort of lumped them together. Did you at all times while these two people were in your vicinity keep your eyes riveted on both of them together or were they sort of going from one to another or, perhaps one more than the other?

A You only look at one person at a time, normally, so when I was reading the note which the woman had my attention was focused on her?

Q On the note?

A On her.

Q YOu didn't read the message by looking in her eyes?

A It was two lines and I -- read them, I looked at the woman and I tried -- I looked at her to see if she

was the one who had guns. The note said they had a gun and obviously she didn't.

Q I take it, then, that you didn't see the gun until after you looked at the note?

A Right.

Q So you looked at the male and you saw a gun there?

A Yes, right.

Q At that moment was your attention pretty much riveted on the gun?

A No.

Q It was not?

A No.

Q All together, how long would you say you looked in this woman's face on February 25?

A Okay. I looked, you know, at him. I would look at her. What I wanted to was to catch them, one or the other, off balance so that I could duck, which is what I did. It was a few seconds at her, a few seconds at him. It was two seconds back and forth, so at the time it was a minute, a minute and a half, a minute's worth, a minute and a half.

Q Have you ever counted a minute?

A Yes, as a matter of fact I have.

Q And you think you looked at these people for a minute and a half apiece?

A The only thing I know, sir, is that we are instructed during our security briefing when we come to the bank that our job during the holdup besides doing everything the way we are supposed to is to look at the people to know what they look like so we can identify them if they are ever apprehended.

Q Is the main part of your instructions to be concerned with safety first?

A Exactly.

Q And identification later?

A No, they go hand in hand.

Q No?

A They go hand in hand.

Q Is it not a fact your instruction not to resist if you think there is danger and to just hand over the money and be concerned about your safety and other persons safety primarily?

A Try.

Q So that ducking was very much in your mind, wasn't it, whenever you had the chance to?

A Not exactly.

Q It was not?

A No.

Q But you ultimately did duck?

A Ducking wasn't my ultimate responsibility. My ultimate responsibility was this person, that this person who was holding the gun wouldn't shoot me.

Q Ducking was one of the ways of going that, isn't that so?

A Sure, if you wouldn't hand them -- if a break came to duck I would and I did.

Q Do I take it you are the one who activated the surveillance camera?

A Yes, I probably was the first one.

Q Was that one by closing the drawer?

A No, we have an alarm.

Q How soon after you first received sight of the female did you activate the alarm?

A While I was reading the note.

Q Do you know how many shots a second this camera takes?

A I haven't the slightest idea. I was told we got a lot of frames. That is all I know.

MR. THAU: Thank you very much.

MR. MITCHELL: May I just ask two or three more?

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Do you remember a description you gave the detectives of the clothes that the male was wearing?

A I remember saying that I thought he had a beige brown c[illegible] a cloth coat as opposed to a leather coat, but that is all I remember.

Q But it was a coat, not a jacket?

A Yes, it was -- well, it appeared to me more like a coat than a jacket because you can't see legs on the other side of the counter, so --

Q Tell me this:

When the gun was shown to you was the gun placed over the counter?

A It was place on the counter this way with the forearm covering it like this (indicating).

Q You saw the gun. Could anybody else in the bank other than the individual have seen the gun?

A Not all the way in the way where the officers were, no, sir. Another teller might have been able to see it. That I don't know, but --

MR. MITCHELL: All right, I have no further questions.

MR. REILLY: No further questions.

THE COURT: Thank you very much. You are excused.

Will the witness be needed further today?

MR. REILLY: No, your Honor, she may not be. She wants to wait for one of her fellow tellers, Miss Rivere, who I'm calling next. I would ask that you direct her to return tomorrow at 11 o'clock.

THE COURT: Yes. When your colleague joins you and you want to leave you may leave today. You are directed to return tomorrow at 11 o'clock.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. MITCHELL: Might we have a short recess?

THE COURT: Yes.

(Recess.)

THE COURT: Call your next witness, please.

MR. REILLY: Our next witness is Celinda Rivera.

- -

C E L I N D A R I V E R A , called as a witness bu the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mrs. Rivera, I ask you to keep your voice up so that we can hear you in the back of the room.

Where are you employed?

A Manufacturers Hanover Trust Company.

Q What branch?

A Branch 157.

Q Where is that located?

A 1185 Avenue of the Americas.

Q Were you employed there on February 25 of this year.

A Yes.

Q Do you recall a bank robbery taking place on that date?

A Yes.

Q What is your position, what is the job that you do?

A Adjustment.

Q Where do you work usually?

I'll withdraw that question.

On February 25, 1976, when there was a bank robbery, where were you located at that time?

A At the teller's station.

Q In which direction were you facing initially?

A Could you repeat that, please?

Q At the time that the bank robbery took place you were seated behind the tellers?

A Yes, I was facing the wall typing.

Q Did there come a time that you turned around?

A Yes, I turned around when I received a phone call.

Q What did you notice when you turned around?

A When I turned around to get up to answer the phone I noticed that one of the tellers --

Q Repeat what you said?

A When I turned around, when I picked up the phone, I noticed that one of the tellers, she ducked right under her station.

Q What was her name?

A Charlene Churilla.

THE COURT: In other words, you had observed her duck down?

THE WITNESS: Yes.

THE COURT: In other words, you observed her in

a squatting position?

THE WITNESS: Yes.

Q What did you notice next?

A I noticed how she was as red as a tomato. I didn't realize what was going on. When I looked at her face I realized it was a robbery, the only reason she would be down there.

Q What did you do after that?

A I looked up and I noticed the person who was robbing the bank. I just froze there, just stood still holding on to the phone.

Q In which direction were you while you were holding on to the phone?

A I was looking to the left.

Q Were you looking at this individual all that time?

A Yes, I was looking straight at his eyes.

Q Did you notice anybody else there?

A I noticed somebody was right next to him, like a shadow, another person.

Q Were you able to determine whether that person was male or female?

A Yes, I noticed it was a female that was beside the male, but that is all I can remember.

Q For how long a period of time were you looking at these two people?

A Three or four minutes.

Q What did they do during that time?

A Well, he was pounding on the station saying, "Come on, come on, come on."

That is all I did hear. I was looking at him saing that -- with my right hand I tried to activate the alarm. I just stood still, but moving just this arm until finally when I reached in I pulled and went like that (indicating). I noticed he was looking at me. That is when they ran out.

Q It is your recollection that you had them under observation for about --

THE COURT: How long?

Q For what period of time?

A Three to four minutes.

Q Did anybody interview you that day concerning the bank robbery from the police or the FBI?

A Yes, the FBI.

Q And they asked you to give them a description as to what the two people looked like?

A Yes.

Q Did you give them such a description, the best

you could?

A Yes.

Q What is your recollection as to what the individuals looked like?

MR. MITCHELL: I object to that. It is what the description was that she gave at the time.

THE COURT: Yes.

What description did you give them at that time?

THE WITNESS: I think it was around five feet five or five feet six, around 150 pounds, black male. It was a very short Afro, very short hair. He didn't have much, something around that.

Q How about the female?

A Well, I noticed a plaid coat. That was about it.

Q Did you notice anything about her age?

MR. THAU: Was the original question how Miss Rivera remembered the woman or remembers the woman now from back then or is the question how she described it to the police who came?

MR. REILLY: All right.

Q The question is do you recall how you described this female.

A I don't think I gave a description of the female. All I noticed was the plaid coat, big eyes and dark hair. That was the only thing I remembered.

Q Do you recall giving that description to the police and the FBI?

A At the time, yes.

Q Subsequent to that day on which there was a bank robbery, did the FBI come to the Manufacturers Hanover Trust to see you with a group of photographs?

A That same day?

Q No, on a different day after that?

A Yes.

Q How many times did they come with photographs, to your recollection?

A I think it was twice.

Q And you remember the FBI agent who came?

A Yes, sir, Mr. Roach, I think.

Q What happened? What did he do when he came to see you?

A You mean with the photos?

Q Yes.

A Well, we went into the conference room and he told me he had some photos to show me of the -- it was the male, right. It was the male. That was the first

one that he showed, the male. He had some photos to show me and I think it was around eight or ten. He put them upside down. He told me that in a few more minutes he was going to turn them over and just to look at them carefully. He says, "Don't rush into it," and just try to point out which is the person that I saw the day of the robbery.

Q What happened?

A So he just spread them out on the table and I just, you know, went through them until, when I selected the person that I noticed the day of the robbery, he numbered all of them and then he made a report, made out a report. I signed it -- to what was going on in the conference room. I dated them and I initialed them.

Q I show you what has been marked here as H-1 and ask you if you will just take a look at these various photographs. I'm going to spread them out for you.

Do you have any recollection of seeing this group of photographs before?

A Seems to look like the same ones.

Q After you made a selection from these photographs did you identify that photograph in any way, do you recall? Did he ask you to write your name on the back

of the photograph that you selected?

A Yes.

Q Can you pick out that photograph today?

A This one (indicating).

THE COURT: Indicating the left-hand photograph, which is the photograph of the defendant. I would note that that was accomplished in approximately 30 seconds.

Q I'm just calling your attention to the reverse side of the photograph.

Is that your signature?

A Yes.

Q Dated March 5 1976?

A Yes.

Q You indicated that the FBI agent came to you a second time; is that correct?

A Yes.

Q Did he have any other photographs with him?

A A group of female photographs.

Q What procedure did he use? Did he go to the conference room again?

A Yes, the same place and took the same procedure.

Q I am going to show you what has been marked as Exhibit H-5 and putting these photographs in front of you --

A (Indicating.)

THE COURT: She immediately identified the defendant.

Q Looking at the reverse side of picture No. 6 in H-5, is that your signature, Celinda Rivera?

A Yes.

Q Dated 4/14/76'; is that right?

A Yes.

Q I am going to call your attention to t he fact, Mr. Rivera, that the photograph that you selected shows the female in a kerchief and I want to ask you whether in fact that kerchief which is present in the photograph, did that play any significance in your selection?

A No, it is just the eyes.

THE COURT: What about the eyes, if I may ask you?

THE WITNESS: The particular look in this photograph, the way the eyes -- is the same thing as I saw the day of the robbery. That is what made me spot her right away.

THE COURT: In other words, it was her eyes, not the kerchief or anything else about her?

THE WITNESS: No, because I assume the day of the robbery she didn't have anything on her head. It

was that look (indicating). That is what made me spot her.

THE COURT: What was she wearing on the day of the robbery?

THE WITNESS: All I noticed was a plaid coat because the counter is pretty high and when I was looking I noticed her eyes. That was about it.

Q Do you recall whether Mr. Roach had any photographs with him, any photographs taken by the bank's surveillance camera on the say of the check?

When did he show it to you?

A The same day that he brought in those pictures.

Q The male or female?

A Female. After I selected that photo, that is when he told me he was going to show me one of the complete body, after he made out the report, after I filled out the whole thing that he put that way. After everything was all done he showed me the one from the bank and I noticed that plaid coat that she had when she turned around, like, to go out. I noticed the eyes and the coat.

Q Do you remember the fact that she was wearing that coat prior to seeing that photograph?

A Yes.

Q And are you quite certain that you were shown the photograph from the bank surveillance camera after you were shown the spread of individual photographs?

A Yes.

Q Not before?

A Not before.

MR. REILLY: I have no further questions.

CROSS EXAMINATION

XX BY MR. MITCHELL:

Q Did you notice that in the spread some of the men were light complexioned and others were dark?

A Yes, I noticed that.

Q Is the man who was in the stickup a light complexioned or a dark man, if you remember?

A You're asking me if he was light or dark?

Q Yes. The man that you saw holding up the bank, was he light or dark?

A He wasn't very dark and he was too light, just medium, I guess, in between.

Q So that if you saw a photograph of a very dark individual such as No. 2 you would know it was not the person; is that right?

A No.

Q What?

A I know that wouldn't be him.

Q I say would the fact that the man was very dark, his photograph, would that eliminate him immediately?

A I see what you mean. Yes, in a way it would.

Q If he was also very light.

Was this man an Hispanic in any way or Puerto Rican?

A No, not to me.

Q So that if you saw somebody who was Hispanic or Puerto Rican in the group you would eliminate him, is that right, such as this individual, showing No. 9?

A Is he Puerto Rican or --

Q Yes.

A Yes, he has a typical look.

Q He has a Puerto Rican look, hasn't he?

A To me he wasn't.

Q You knew it wasn't a Puerto Rican?

A You are trying to get me confused. Certain blacks are Puerto Rican and Hispanic. Some of them aren't. Somewhere along the line there is a resemblance.

Q As to the man that held up the bank --

A To me he didn't look Puerto Rican, if that is the question you are trying to ask.

Q That is right?

A No.

Q Did you notice his hair?

A Very short, very round eyes.

Q I show you No. 3. Wouldn't the hair eliminate him?

A To me it would have.

Q How about 8, wouldn't the hair have eliminated him?

A Yes, because he has a part in the side.

Q How about No. 5?

A Very little hair, like over here.

Q That would have eliminated him?

A Too much forehead. Right, to me it would have.

Q Did you notice -- one other thing -- where his hands were?

A Like that (indicating).

Q You saw them both palm down?

A Like that when I first looked at him. It was something sticking out. I assume it was a gun.

MR. MITCHELL: I object to what she assumed.

A Well, with his hands --

THE COURT: She first saw him with his hands

together at the edge of the counter and later she saw his hands on the counter, as I understand it, and he was --

THE WITNESS: Saying "Come on, come one."

THE COURT: He was pushing hands up and down against the counter and saying "Come on, come on."

Q The teller who was being held up, who ducked under the counter, was she yelling anything about a gun?

A Never said anything about a gun, no, nothing.

Q Did you tell Special Agent De Von or the one who interviewed you on the day of the holdup -- I show you 3506 and ask you to Read this part to yourself, starting here.

Does that refresh your recollection as to whether Charle had yelled that she has a gun at least three times?

A Not that I remember.

Q You don't recall saying that to Special Agent De Von? In other words, you never heard --

A I tell you, when it first happened, I mean, it is complete fresh and you could remember everything right there and then, and maybe there is a lot of things that I said at that time that right now I can't remember and I won't be able to answer you because I just don't recollect that I had said that, but may be I did. I really don't

know.

Q At the present time you have no recollection of having said that?

A No.

Q Or that it happened?

A That I don't remember.

MR. MITCHELL: Thank you.

CROSS EXAMINATION

BY MR. THAU:

Q Do I understand that the first thing that attracted your attention on February 25 was when you saw your colleague, Miss Churilla, duck under her counter?

A Would you repeat that again, please?

Q The first thing that attracted your attention that something was happening was when You saw Miss Churilla under the counter?

A Yes.

Q Before that you had no notice that anything unusual was going on?

A No, because everything was very quiet. I didn't hear anything.

Q You were then seated at a desk behind Miss Churilla?

A Yes, that is where I have my desk.

Q That was behind her?

A Right.

Q How many feet would you say behind her, approximately -- like from you to me, less than that, more than that?

A Maybe to where those blue boxes are.

Q This over here?

A Yes.

MR. THAU: Could we estimate on perhaps six feet from the witness to these pads of paper?

MR. REILLY: Yes, the stenographer's pads. I'd say six feet.

Q Did you at any time before these two persons disappeared from your sight stand up? In other words, from the moment you saw Miss Churilla duck under her counter to the moment these two visitors at her counter disappeared, did you at any time stand up?

A Yes. I tried to stand up to see which way they were going.

Q By then had they already had their backs to you?

A When I stand up?

Q Yes.

Let me put it another way:

There was a time when you saw the face of the man and you saw at lease the size of the woman; is that correct?

A Yes.

Q At that point were you seated or were you standing?

A I was sitting down when I was looking at these people.

Q Did there come a time when they turned around, this time with their backs to the counter?

A No, not their backs, because Miss Churilla -- let's ay the station is over here. The door is over here (indicating) and they did not turn around. They just sort of like walked straight.

Q To their right so that their left profile was to you; right?

A Yes.

Q How far from the station itself would you say these two visitors were when you finally stood up?

A How far?

Q Yes. In other words --

A When I stood up they was already gone.

Q What is that?

A When I got up they were already out the door.

Q May we take it, then, that however much of their faces you saw was seen by you while you were still seated?

A Yes.

Q Is your desk on the same level as Miss Churilla when she stands behind her teller's window?

A Yes.

Q Would it be fair to say that the top of that -- withdrawn.

Could you tell us whether --

A Counter.

Q One second. You are anticipating me.

A Sorry.

Q It is all right.

Could you tell me whether the floor level is the same in front of the counter and behind it? Do you know what I mean by that?

A Yes.

Q Is it the same?

A The same level.

Q Would you estimate that the top of the counter is approximately five feet off the floor or five feet tall?

A I don't know the difference in feet, how tall

it is.

Q You have stood at the counter, haven't you, either as a customer --

A Up to here on me.

Q Up to your stomach?

A Some place --

Q How tall are you?

A Five feet two.

Q And it is up to your stomach?

A Something around here (indicating). I wear heels.

Q Right above it, under the breast.

Would you stand up, perhaps, and give us your estimate of where the counter reaches you would be transacting business with a teller?

A Where this is the station then -- the difference between all her junk about her -- she will be working. It would be something like this (indicating).

Q Like your stomach?

A And the other part would be --

Q Up to your neck? Or indicating your Adam's apple, about?

A Yes. Okay.

Q And, of course, the lower portion you were

mentioning before is the business side of the counter where Miss Churillo counts out the money and so on; is that right?

A Yes.

Q And the customer's portion is about up to your Adam's Apple in height; is that right?

A Yes.

Q How high a chair were you seated on behind your desk, a standard chair like you see here?

A Yes, something like that.

Q So that would it be fair to say that when you are seated on such a chair your head is considerably lower than if you were standing up; right?

A True.

Q Perhaps as much as two feet lower; is that right?

A I guess so.

Q So that you were about six feet away, behind Miss Churilla; is that correct?

A Yes.

Q How tall are you?

A Five feet two.

THE COURT: She said five feet two.

MR. THAU: I apologize, your Honor. I forgot.

Q Did you see the woman wearing anything on her head?

A No. As far as I know, she didn't have anything on her head.

Q You are positive she did not?

A Yes.

Q You say that you remember telling the agents when they interviewed you on the date of the holdup or the next day that the woman had a plaid coat; is that right?

A Yes.

Q Now, Miss Rivera, I ask you to think back carefully on whether this vision that you have of a plaid coat is not perhaps a vision that you acquired as a result of the surveillance photo that you were shown on April 14 rather than our view of such a coat on February 25; is there any possibility?

A The reason why I remember the coat so well is was sort of a plaid, reddish, greenish, yellowish bright color that actually stands out.

Q Would you and I agree that plaid is generally the colorsyou just gave rather than pink?

A Yes, on a black and white photograph.

Q You can see a plaid design; is that right?

A Yes.

Q What I'm asking you now is whether you had a vivid view of this plaid coat on February 25 and that is why you said it to the police?

A I didn't see the complete coat, if that is what you are referring to.

Q Any part of it?

A The only part -- this is the only part you could see, sort of like the face and like the shoulders, this part over here. That is why I said it was plaid.

Q And you told this go the FBI agent?

A Excuse me?

Q And you told this to the FBI agent?

A Yes.

Q Did you ever see a report prepared by the FBI which report went into the description you have given them of this female?

A You mean after the report was done?

Q Yes.

A That same day or --

Q The next day or two days later, or a week?

A No. When he made the report he wrote out the whole thing and he was reading it to me, and I signed it. I haven't seen that report ever since.

Q You signed the report that went in a description?

A About the pictures.

Q That is something else?

A If you are talking about the date of the robbery, yes.

Q You signed a report?

A You are asking me if I signed it?

Q Yes.

A That is a very good question. I don't recall if I did or I didn't.

MR. THAU: Will the Government concede, your Honor, that with respect to the report on 3/8/76 of this witness' interview, there is no mention of a plaid coat nor is there particularly, noticably large eyes.

MR. REILLY: Your Honor, we would prefer to have that offered in evidence, if it is going to be offered, in lieu of any stipulation.

MR. THAU: The entire report?

MR. REILLY: The entire report, 3506, for the purpose of this hearing.

MR. THAU: I think that is cluttering the record unduly.

THE COURT: That is what he wants. He is not prepared to make a stipulation, so you have two choices, drop the matter or offer the exhibit.

MR. THAU: I will offer it.

MR. MITCHELL: I will object.

THE COURT: I will receive it only against the offeror in this case, Mrs. Green. I will not consider it in my determination of the matter so far as it relates to Mr. Green.

MR. THAU: Very good. Thank you.

THE COURT: That will be Defendant Debra Green's Exhibit A.

(Defendant Debra Green's Exhibit A was received in evidence.)

MR. THAU: I particularly call your attention to page 2 thereof saying she described the female and then it goes into a description.

THE COURT: I have Special Agent De Vcn's report.

Q Miss Rivera, on two occasions an FBI agent came and showed you photos, right, first some males and then of a female; is that right?

A Yes.

Q And you told us that his procedure was to place these photos in front of you upside down; is that correct?

A Right, that is what he did.

Q In other wores, the face of the person depicted on the picture was on the table and the back of the photo was up?

A Right.

Q Is that right?

A Yes.

Q And thereafter he left it there two or three minutes and he turned them so that you could see the faces?

A After he laid them all out he just slowly turned them over.

Q Slowly?

A Yes.

Q One by one?

A Yes.

Q Was he asking you to look at the pictures as soon as he turned them over, essentially?

A Yes, after the whole thing was --

THE COURT: Let's hear the question and the witness' response up to the point at which she was interrupted.

(Record read.

THE WITNESS: I meant to say after he turned all the picture over, that is when he told me to watch

them carefully, take my time, don't rush into it. That is what I did.

Q I'm now laying the picture in front of you face down. This is basically the way he lined them up and then turned them over one by one, basically?

A Yes, like this (indicating). They were all blank, nothing written in the back.

Q Nothing written in the back?

A No. I recall there was nothing on the back.

THE COURT: When you saw the pictures there was nothing onthe back; is that it?

THE WITNESS: Right.

THE COURT: Very well, next question.

THE WITNESS: Then he tuned them one by one, but I do remember nothing was written in the back.

Q Of any picture or only the picture you pickedc out?

A Of any picture.

Q Had you discussed this incident with Miss Churilla before the identification of this photo spread?

A No. The day of the robbery, when they interviewed us, we both gave the report, and that was it. She didn't discuss it. I was very upset then. A couple of weeks later, I think the following week or so, that is

when Mr. Roach came with the pictures.

Q And since you had not gotten, presumably, as good a look at these assailants as she had gotten, you didn't discuss what you remembered about their features and their discussion with her?

A With Charlene?

Q Yes.

A That I recall, no.

Q Were you interviewed separately or together by the FBI?

A Separately.

Q How about the pictures -- were those shown you together or separately? In other words, were you and she together at the time?

A No, separately.

Q Do you know whether she saw the pictures before you did or after you did?

A I think when it came to the female she saw the female first, then I was second.

Q Didn't you see Charlene's signature and the date on the back of the picture that you selected?

A I noticed -- I didn't see no signature, no numbers, no date on it.

Q There wasn't even a number; is that right?

A There was nothing. I do remember very clearly all this was blank.

Q Completely?

THE COURT: Indicating the back of the photograph.

A Right, nothing was written.

MR. THAU: May the record show that the picture of the defendant has on the back of it, No. 6, two signatures, Celinda Rivera, 4/14/76 and Charlene Churilla, 4/14/76.

THE COURT: May I see that?

MR. THAU: Surely.

THE COURT: Is that your signature?

THE WITNESS: Yes.

THE COURT: Was there any other signature on there when you signed it?

THE WITNESS: When I signed it I was the only one there. Everything else was blank.

THE COURT: Thank you.

Q But your recollection is that Charlene saw these photos before you did; is that right?

A On the female, yes.

Q That is what I'm talking about.

A Yes.

Q Did you have any conversation with Charlene between the time she saw the photos and the time they were shown to you?

A Yes, she was at the window and I was out to lunch.

Q Is it your recollection that Agent Roach numbered the photos after you had made your selection on April 14th?

A Yes. After?

Q That is what I'm saying, after?

A Yes.

Q In fact that is what you testified to on direct examination; is that right?

A Yes.

MR. THAU: Thank you very much.

MR. MITCHELL: Can I just ask a few more questions?

THE COURT: Yes.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Do you remember the male photographs which you were asked to identify; do you remember the group of male photographs that you were asked to identify?

A Yes.

Q Was the procedure the same, that is, Agent Roach had them face down?

A At the time when he had them face down was there any writing on them?

A No.

Q None at all?

A No, not writing.

Q Thereafter he turned them up so you could look at all of them?

A Yes.

Q Then you eventually selected a photograph?

A Yes, right.

Q When you selected that photograph he asked you to sign your name on them?

A First he numbered.

Q After he --

A After I selected the number he numbered the photo. After he numbered the photo I signed them and put the date. That is when he made the report, after.

Q After?

A Yes.

Q Was there any other writing on there of any kind other --

A No writing whatsoever.

Q Was there a name in red on there?

A No writing.

Q No writing?

A No writing. I was the first one to sign.

Q Which is your signature?

A This one here (indicating).

Q At that time there was just -- when you signed, there was the No. 4; is that right?

A Right.

Q Nothing in red?

A Nothing in red, none of these numbers and no signature.

MR. MITCHELL: Thank you.

MR. THAU: May the record reflect that with respect to the photos other than my client's in the spread they have names of women on them at this time.

THE COURT: Let me see them.

MR. THAU: I'm not certain right now whether all of them, but most of them certainly have.

THE COURT: They are in evidence. Of course, the exhibits speak for themselves. There are names on here. I would note that my recollecton of this witness' testimony is that the backs of all photographs were blank at the time she signed her name to the photograph which bears the No. 6.

THE WITNESS: That is correct, your Honor.

THE COURT: Thank you.

MR. MITCHELL: Your Honor, I hate to do this, but I didn't have my glasses.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Tell me, this No. 2, there was nothing on there, no name, no knowing on the back of the photograph?

A You are referring to this picture?

Q Yes.

A When I looked at this picture, nothing.

Q There was none here?

A No.

Q On No. 6 and on No. 3 was there a stamped name Stanley Bailey at the time you saw it?

A No.

Q On No. 8 was there a written name Henry Thomas Ross, Jr.?

A No.

Q Was there an Anthony Barrett on it at the time?

A No.

MR. REILLY: We will stipulate. I think we understand the trend of Mr. Mitchell's examination.

THE COURT: I think Mr. Mitchell is finished. Is that correct, Mr. Mitchell?

MR. MITCHELL: Yes, thank you.

15 MR. REILLY: The Government has no further examination.

MR. THAU: I would ask for a bit of a physical demonstration with respect to whether -- for Miss Rivera to sit herself in a chair and show us how she could see over a counter given the angle of her alleged sighting and whether she could see the face of the people standing behind the counter which she just described. It is my judgment that likely as not whoever was on the other side of the counter couldn't be seen. Their faces couldn't be seen.

THE COURT: Since you don't have a mock-up of the bank at this point I don't know that the physical setup that you request is going to be particularly meaningful.

MR. THAU: In that case, your Honor, may I ask two or three questions which will give me the dimensions that will permit me to get up a trigonometric proof of my contention?

THE COURT: Ask any questions you want.

CROSS EXAMINATION (Continued)

BY MR. THAU:

Q You are five feet two inches, Miss Rivera?

A Yes.

MR. THAU: Can we stipulate that up to her Adam's apple, let's say, Miss Rivera may be four feet six?

MR. REILLY: If we also stipulate the size of her heels.

THE COURT: She said that she wore high heels.

MR. THAU: The heels have nothing to do with it when you are sitting in a chair. It matters not how high your heels are.

THE COURT: I agree. Now we have got to find out how high the chair was.

MR. THAU: We'll take it to be a standard chair.

THE COUT: I don't know that I can take it to be anything.

MR. THAU: I will argue it at the conclusion.

THE COURT: Anything further of Miss Rivera?

Thank you, you are excused.

Miss Rivera, I indicated to your fellow teller, Miss Churilla, that she might and you might leave at this point. I direct that you both return tomorrow at 11 o'clock.

THE WITNESS: Okay.

THE COURT: This was a hearing before the trial.

You will be coming back tomorrow at 11 unless we give you some other instruction to the contrary.

THE WITNESS: Okay, thank you.

(Witness excused.)

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G E N E T H O M A S W H I T E , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. White, where are you employed?

A I'm working at the Manufacturers Hanover Bank, Fifth Avenue and 18th Street.

Q Are you a management trainee there?

A Yes, I am.

Q On February 25, 1976 were you working as a teller at the Manufacturers Hanover Branch on 47th Street and Sixth Avenue?

A Yes, I was.

Q On that day did you observe a bank robbery?

A Yes, I did.

Q Where were you at that time?

A I was at my teller's station.

Q How were the lighting conditions then?

A It was very bright. As a matter of fact, I remember that it was a bright day.

Q How far away were you from Miss Churilla?

A Probably about as far as I am from you.

THE COURT: Indicating approximately 12 feet.

MR. REILLY: Somewhat more.

MR. THAU: Yes.

MR. REILLY: 15 feet.

MR. THAU: Yes.

THE COURT: 15 feet?

MR. REILLY: Yes, it being one-third of the way down the jury box.

Q Was there anybody standing between you?

A No.

Q Did there come a time when you first noticed something unusual at her station?

A Yes, I did.

Q What did you notice?

A Well, there was some kind of an exchange over a piece of paper, which I thought was a little unusual because normally when something is handed over it is a check which the teller takes, but I first noticed that Miss Chrilla was having trouble getting the piece of paper from the woman who was standing at her station, and I did

not have a customer at that time and I just looked down there. As we normally do, I look around the branch and I thought it was kind of unusual that she didnt receive a paper which, from where I was, looked to be a check, appeared to be a check, and then I noticed the man was standing next to the woman and I could not hear what he was saying, but there was an expression on his face and the way he was kind of expressing himself indicated to me that there was something wrong and I did not know what at that point.

Q Did there come a time when you observed a weapon being handled by the man?

A Yes.

Q About how long after, when you first noticed it?

A You mean from the time I first noticed the man or noticed --

Q When you first noticed the exchange between Miss Churilla and the female?

A I'd say maybe 15 or 20 seconds, something like that. It wasn't that long. I did notice it immediately.

Q Were you looking in that direction all the time?

A Yes.

Q What did you do when you noticed that?

A I pulled my alarm.

Q Did you continue to observe these two people?

A I did for a few seconds and then I looked around to see if the guard was anywhere in the area and by that time, when I turned back, they had gone.

Q How long a period of time were you actually observing the male and female opposite and Miss Churilla at the counter?

A I would say maybe two, three minutes, not much longer than that.

Q From the time you were interviewed that day by the FBI or some law enforcement agent?

A Yes, it was the FBI.

Q Did they ask you to provide a description of the two individuals?

A Yes.

Q How were you able to do so?

A I was able to do it for the man. I could not do so for the woman, identify the woman.

Q How did you identify the male?

A As being, if I recall, as being fairly medium to small, as wearing a checked coat or plaid coat or some kind of a coat and some kind of design in it. There were

no real distinguishing marks, as I recall. He was not wearing glasses or anything like that. His hair was fairly short but in a kind of an Afro style, short.

Q Did you identify the two individuals by race?

A Pardon?

Q Were you able to identify them by color?

A Yes.

Q How did you identify them?

A They were a black male and a black female.

2 Q With respect to the female, were you able to
3 identify her with respect to age and height?
4 A I really had to guess at that. I thought
5 that she was fairly young or considerably younger than the
6 male and a little shorter than he was, but other than that
7 I was not able to do so.
8 Q Do you remember anything about her facial
9 features?
10 A No.
11 MR. THAU: Is the question whether he remembers
12 it now or whether he can describe it for the Judge?
13 THE COURT: I understood it to be his present
14 recollection.
15 MR. REILLY: Present recollection.
16 Q Do you have any present recollection of the
17 female?
18 A No.
19 Q Did there come a time when the FBI came some
20 time after the bank robbery on a different day to show
21 you some photographs?
22 A Yes.
23 Q What were those photographs?
24 A They were all male and I guess the regular
25 police sort of photographs. I had never seen anything

like them before.

Q Where did they show them to you?

A In the conference room at the branch.

Q Do you recall how many agents were there?

A One.

Q Who was that?

A Mr. Roach. I think, I believe his name was Roach.

Q Describe the manner in which he showed them to you?

A Well, when I entered the room he explained who he was and showed me his identification and explained what I was there fore and said that he would show me a series of photos and wanted me to identify the person whom I thought was the suspect. He did say that the FBI had someone in mind, but, you know, he didn't elaborate on this and I sat down at a table and he showed me the photos.

Q When he showed you the photographs do you recall whether he showed them to you initially face up or face down?

A I can't remember.

Q Do you recall whether you selected anybody from that group of photographs?

A Yes, I did.

Q How long did it take you to do so?

A Probably around a minute, if that long.

Q I'm showing you what has been marked as II-1 in evidence. I'll spread them out before you.

Do you recognize this group of photographs, sir?

A Yes, I saw them.

Q Can you identify the picture that you selected on this date?

A Yes.

Q Would you pick him out, please?

A This one (indicating).

MR. REILLY: Indicating in the period of five seconds, I would sa-, your Honor, the picture of James Melvin Green, No. 4.

Q Have you ever seen this set of photographs since the time the agent first showed them to you at the bank and today?

A No.

Q Is this your signature on the back of the photograph?

A Yes.

Q And dated 3/5/76?

A Yes.

MR. THAU: May we know whether today means today right here in court or whether today means today elsewhere?

Q Today right here in court.

A Yes. I haven't seen these pictures since they were laid out.

Q Were you ever shown any pictures of females?

A No.

Q On April 14, 1976, if you can recall this, were you still working at the Sixth Avenue and 47th Street branch of the Manufacturers Hanover Trust Company?

A No, I was not.

Q And is it because of your management trainee status that you were switched around?

A Yes, transferred about.

MR. REILLY: Thank you. No further questions.

CROSS EXAMINATION

XX BY MR. MITCHELL:

Q When you were interviewed and asked for a description, do you recall saying that the man had a light mustache?

A Yes, I believe I did.

Q And did you also indicate that the man had on a short, dark jacket of cloth material, possibly plaid?

A Yes.

Q Do you recall the male being in a plaid; is that right?

A Yes, or at least I recall there being a figured garment of some nature.

Q Yes. Like a plaid?

A Yes.

Q When you looked at the photographs, did he first put them face down and then turn them over or did he put them all face down so that you had one down and then a second one and a third one, so you were looking at each one as you were looking down; do you recall what happened?

A I really can't recall how exactly that took place.

Q You described the man on the day of the arrest as being a Negro as distinguished from a Puerto Rican or Spanish type; is that right?

A In looking over the photographs -- I'm showing you No. 9 of Exhibit H-1 -- would you say that that was a Negro?

A Yes.

Q You said the man was of dark comlexion; is that right?

A Yes.

Q Would you say that No. 6 was dark complexioned and No. 8 was dark complexioned?

A It is very difficult to tell from the lighting, but I would say he was probably darker than --

Q Would the individual that you saw in the bank, would he be darker than both of these individuals?

A Yes.

Q You gave a height of the individuals; is that right?

A Yes.

Q Approximate height?

A Yes.

Q What was it, five feet five, five feet six?

A I think it was fairly short.

Q Short?

A Short to medium.

Q Did you indicate to the agent that you would like to see the height of the men at any time, the build of the men?

A Did I indicate to them?

Q Dkd you indicate to the agent when he was

showing you the photographs that you couldn't tell how tall he was, so that it might interfere with your identification?

A No, it never came up in the discussion.

Q Did you notice that this photograph No. 2 was of a man that would be much broader than the slim individual you described?

A Yes.

Q You noticed that right away -- it is obvious?

A Right.

Q Did he ever show you or any agent show you any surveillance pictures that had been taken in the bank?

A No.

Q You never saw them?

A No.

Q How far away from the teller that was being held up were you?

A I'm terrible at distances. I think I was the fourth station away, about three feet or so between us. I would say maybe 12, 15 feet.

Q 12 to 15 feet?

A Yes.

Q Were you able to hear anything she said?

A No, I did not hear. I would say I could tell there was an exchange, but I could not hear what was going on.

17 Q From your position, who was nearer to you, the female or the male?

A The female was nearer.

Q So the female was between you and the male; is that right?

A Yes, right.

Q And were they of about the same heigh?

A From where I was standing and the way they were standing, she appeared to be shorter somewhat.

Q Did you see the teller duck behind the counter?

A I saw her as she was ducking. At that time I was just turning back. They were, the two, the man and woman, were leaving and --

Q In other words, as she ducked they were leaving?

A Yes. I caught this out of the corner of my eye because I had been looking around for the guard and when I turned back.

Q She was ducking?

A She was ducking.

Q And they were leaving?

A Yes.

Q There was no time gap between her ducking and their leaving? In other words, a minute or two didn't elapse?

A No.

Q It was just simultaneously?

A Yes.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Mr. White, you were never shown a photo spread of women?

A No, I was never.

Q Do you know whether you were on duty on April 14, 1976?

A I was not at that branch.

Q You were elsewhere?

A Yes.

THE COURT: He had transferred. He testified that he was transferred.

MR. THAU: I missed that. I'm sorry.

Q You told Mr. Mitchell a second ago that of the two visitors at Miss Churilla's counter the female was closer to you than the male was; is that right?

A Yes.

Q You also told Mr. Reilly that you really couldn't give much of a description of the female to the FBI when they came to visit you?

A Right.

Q You did describe her age, didn't you, as about 20?

A I thought she was younger. About that.

Q Did you describe her as being the same height as the male?

A No.

Q I show you a piece of paper and ask you to read to yourself this line here which I indicate.

I ask you if that refreshses your recollection respecting whether you told the FBI that the female was the same height as the male?

A I suppose, if it is there. I recalled that she -- that there was not that much difference, but it seemed to me that she was shorter.

Q Did you describe her as thin?

A Yes.

Q Did you describe her hat as being light, possibly beige, knit floppy type?

A Yes.

Q And do you and I understand the same thing by floppy hat, that its borders are sort of large and flop and that is why they call it floppy; is that right?

A It was kind of folder under. It was a --

Q Folded under what?

A It is hard to describe. It is a big knit thing, looks like a knit.

Q A beret?

A Somewhat, a larger version of that.

Q Mr. White, have you in preparation of this case been interviewed by Mr. Reilly?

A Yes.

Q In his office?

A Yes.

Q And at that time were any of the witnesses present?

A No.

Q Were you made aware that there might be some difficulty with respect to certain witnesses describing a certain hat worn by the woman as beret like and your description of it as floppy; was that pointed out to you in the last week or two as you have been preparing this case?

A No.

Q Was any emphasis placed in your preparation for trial on the fact that you described a hat as a floppy hat?

A No.

Q You've seen women, haven't you, with knit hats that in fact have borders that flop? You've seen that, haven't you?

A Yes.

MR. REILLY: This is an identity hearing. The witness has indicated that he never saw any photographs of women. I really don't see any taint coming out of Mr. Thaw's line of questioning.

THE COURT: I have difficulty in seeing it myself.

I think what you are doing at this point is obtaining a little extra pretrial cross-examination and I think you are aware that, laudable as the attempt may be, it really was not envisioned when we set this matter down for a hearing relative to the identification by the witnesses seeing certain photographs.

MR. THAU: As long as your Honor finds it laudable, I thank you and I have no further questions

Mr. White, thank you.

MR. REILLY: We have no redirect examination.

THE COURT: You are excused. I will direct you, as I have the other tellers from your bank, to return tomorrow morning at 11 o'clock.

Thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: We will take our luncheon recess at this time. I see it is ten minutes past one. We'll resume at 2.15 and continue the hearing until 4.30.

(Luncheon recess.)

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AFTERNOON SESSION

(2.15 p.m.)

MR. REILLY: Our next witness is FBI Agent Russell.

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D A V I D R U S S E L L , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Russell, are you employed by the FBI?

A Yes, I am.

Q Are you a special agent?

A Yes.

Q How long have you been a special agent?

A Slightly over one year.

Q What is your present assignment?

A Presently assigned to counterintelligence duties.

Q Prior to that you were assigned to the Bank Robbery Squad?

A Yes, for approximately --

Q During February and March were you so assigned?

A Yes, I was.

Q Directing your attention to the First National City Bank at 250 Fifth Avenue, did you have occasion to go to that bank with a spread of photographs?

A Yes, I did.

Q On how many occasions did you go there?

A I went there twice.

Q On what dates?

A On February 26 and on March 19.

Q On the first time you went, on February 26, what was the purpose of your visit?

A That was the day after that bank had been robbed and I went on the 26th to show a spread of photographs to the victim teller.

Q What was his name?

A His name was Robert Windram.

Q Where did you meet Mr. Windram?

A I first contacted his supervisor, Mr. Gullow, and asked to see Robert and Mr. Gullow had him come into his office.

Q Did you show him this spread of photographs?

A Yes, I did.

Q How did you do that?

A I had six photographs which I spread out on the front of Mr. Gullow's desk.

Q Were they face up or face down?

A They were face up.

Q What happened?

A Robert looked at the photographs for several minutes, was unable to positively identify anyone as being any of the people that had robbed the bank, and when asked if anyone looked similar to the male individual, he picked out to photographs.

Q Do you have that set of photographs with you today?

A Yes, I do.

MR. REILLY: I would like to mark as Hearing Exhibit H-10 for identification six photographs.

(Government's Exhibit H-10 was marked for identification.)

xx Q Would you indicate to me which photographs Mr. Windram picked Out as resembling or being similar in any way to the bank robber?

A He picked out the photograph of Toby Raines and the photograph of James Green.

Q Is that photo No. 3?

A That is No. 3, yes.

Q Toby Raines?

A Toby Raines is numbered 4.

Q Did you return to the First National City Bank where Mr. Windram worked on a future occasion?

A I returned there on March 19.

Q Did you have a new photo spread with you at that time?

A Yes, I did.

Q Was that subsequent to the defendant James Green's arrest?

A Yes, it was.

Q Did you have an arrest photograph of Mr. Green?

A That is correct.

Q Did you have a new photo spread that you showed him?

A Yes, I did.

Q Tell us the circumstances of you showing it to Mr. Windram?

A I arrived at the First National City Bank and looked for Mr. Gullow. He was not in. I approached Teller Windram and advised him that I had more photographs which I wanted to show and I asked if he could locate Mr. Gullow for me. We proceeded to the back of the bank and Mr. Gullow came out. We went to his office and I went through the same procedure as the first time. I spread the photos on the desk and at that time Robert

Windram pointed to one of the photographs and indicated that that was the man who robbed the bank.

Q Whose photograph was that?

A He pointed to James Green's photograph.

Q How long a period of time between your putting these photographs on the table and Mr. Windram selecting the James Green photograph?

A As soon as I completed spreading the photographs out and asked Robert to look at the photographs, he immediately pointed to the photograph of Green.

Q Do you have those photographs with you today?

A Yes, I do.

MR. REILLY: I will mark them as H-11.

(Government's Exhibit H-11 was marked for identification.)

xx Q How many photographs are there?

A There are seven.

Q Would you indicate to me the picture that he selected?

A (Indicating.)

Q Are you pointing to a picture of James Green?

A They were not numbered, but that is the picture of James Green.

Q Did you ask him to put his signature on the

back of the photograph?

A Yes, I did.

THE COURT: What number is that?

MR. REILLY: The photo bears the signature of Robert Windram, 3/19/76 and your Honor will note that it appears to be a photograph of the defendant James Green. It is part of Government's Exhibit H-11.

Q Can you identify the photograph any other way?

A I believe it has nother teller's initials on it.

Q I notice there is a series of numbers on the bottom of the photograph in pencil?

A Yes, that is the file number.

Q Is that the file number of this particular bank?

A It is the file number of the bank robbery of the First National City bank.

Q Does that differ from the other photographs?

A That is different from all other photographs.

Q It does differ?

A Yes.

Q Directing your attention to the first set of photographs, H-10, are any or do any of these photographs

contain pictures of a black individual with a mustache or goatee of any sort?

A One of the six pictures has an individual with a slight mustache.

THE COURT: Was that the photograph of Mr. Green?

THE WITNESS: No, it was not.

THE COURT: Or of someone else?

THE WITNESS: Someone else.

THE COURT: The photograph of Mr. Green is of a man clean shaven; is that right?

THE WITNESS: There is a slight shadow over his upper lip, but it doesnot appear to be a mustache.

Q With respect to the second set of photographs, H-11 for identification, calling your attention first to Mr. Green's photograph, is there any facial hair?

A Yes, in this case Mr. Green has a mustache and a light goatee.

Q Are the other photographs in H-11 similar in that respect?

A Six of the seven photographs, the individuals have mustaches and light goatees and the seventh, the other photograph, the individual appears to have a slight facial growth in addition to a mustache but not necessarily

a goatee.

MR. REILLY: Your Honor, we have no further questions of Mr. Russell.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Tell me, Agent Russell, and I'm talking about the first exhibit, when on the 26th of February a spread was made for Mr. Windram, who made up this spread?

A Agent Higgins, Ed Higgins.

Q Higgins?

A Right.

Q Were you aware of the weight and the height of the various individuals depicted in this spread?

A No, other than any information that would have been on the reverse of the photographs.

Q Well, I see a photograph of a Ronald Williams. It says he is six feet and weighs 170 pounds. Was this supposed to be representative of the defendant who was somewhere around five foot six or five foot five and weighed somewhere between 120 and 140 pounds?

A No, the photographs were selected on the basis of facial features, not height.

Q What is the resemblance between Williams and the defendant's photograph as far as facial features are

concerned?

A Okay. Well, I don't know, as you can see, facial features --

Q You used it. You tell me?

A They are both black males. They both have short hair.

Q Yes.

A Both have relatively thin faces. That is about it.

Q How about the nostrils, isn't there a distinctive difference? Isn't the one of Ronald Williams one of those broad nostrils as compared with the aquiline type on the defendant?

A The nose of Mr. Williams is broader than the nose of the defendant.

Q Tell me, the photograph of Robert Hairston, who was six foot one, is that supposed to be something similar to the defendant who is less than five foot six?

A I don't really understand the significance of the height when all you are looking at is the face.

Q When you are making an identification, have you ever participated in a lineup?

A Yes.

Q Do you put people five foot five with six foot

one people or aren't they all supposed to be the same approximately --

MR. REILLY: Objection.

THE COURT: Sustained. This is not a lineup. There is no indication from the photographs, which are only a portion of the body, as to the height of any of these individuals.

Q Would you say that Mr. Hairston was light complected?

A I'd say he is a Negro male of relatively light complexion.

Q And the defendant is of a darker complexion; is that right?

A Slightly darker.

Q How about Parker, isn't he lighter than the --

A I'd say Parker is quite similar complected.

Q You think so.

Now, when you made up the second lineup -- by the way, which two did Mr. Windram say looked like the defendant and he wasn't sure? We know one was that of James Green and which was the other?

A The other was Toby Raines.

Q Did you include Toby Raines' picture in the second identification?

A No, I did not.

Q In other words, you eliminated one of the two possibilities; is that correct?

He said it might be either one; right?

A He said those individuals looked similar to the individual who robbed the bank.

Q Similar, but you didn't include the two of them in the next lineup?

A That is correct.

Q You eliminated one?

A I left out Mr. Raines' picture.

Q Wasn't this an indication to the prospective witness that one of the two he said looked similar was the wrong one?

A I don't believe so.

MR. MITCHELL: Will your Honor bear with me for a moment?

(Pause.)

BY MR. MITCHELL:

Q How many were there in the first?

A There were six.

Q How many were there in the second?

A There were seven.

Q Were you aware of the lights and weights of

the seven?

A Only on the basis of the information on the back of the photograph.

Q And the backs of the photographs have no information whatsoever, so you don't know whether they were similar in height or weight?

A No, I do not.

Q Let me ask you this:

Was the man who was supposed to have held up the First National City Bank on the 25th of February, the same date that the Manufacturers Trust was held up, was he supposed to have had a mustache and a goatee?

A I don't recall. I looked at the statement which the teller gave to one of our agents as far as the description he gave. I don't recall the description at this time.

Q Would it refresh your recollection that the three people who were asked to make identifications said that the male who held them up -- two of them said he had no mustache and the thire one said there was a possibility of a mustache; and that nobody mentioned a goatee?

A I really don't know about that bank. I never had anything to do with the bank you are speaking of.

MR. MITCHELL: I have no further questions,

your Honor. However, I would like to take a look at the exhibits, Exhibits 10 and 11. As to the photographs of the defendant who was supposed to have perpertrated the holdup on the same day.

THE COURT: Have you examined them?

MR. MITCHELL: All right, your Honor.

CROSS EXAMINATION

BY MR. THAU:

Q Agent Russell, do I understand with respect to these two photo spreads that the one of February 26 and that of March 19, that the only person, the only male whose pictures appear in both spreads is James Green?

A That is correct.

Q That is, as to all the others whose pictures you had on February 26, you did not present their pictures in the spread of March 19; is that correct?

A No, I did not.

Q So that whoever viewed your March 19 spread could have remembered James Green as having appeared in the February 26 spread?

A Except that it was a different photograph.

Q In Term so person; is that right?

A Well, they would remember a photograph. They would not remember anything else, if they remembered the

photograph.

Q You recognize a lot of people, don't you, from the newspaper photos whom you never saw in person; isn't that right?

A I have seen a picture in the paper and seen another picture?

Q Yes.

A True.

Q Did you ever see President Truman in your life in the flesh?

A No.

Q If I showed you a photograph o President Truman you would know who he is, wouldn't you?

A I think I would recognize him.

Q Did you show Mr. Windram any pictures of females?

A No, I did not.

Q On your second trip to the bank Mr. Green had already been arrested; is that right?

A Yes.

Q And had been photographed?

A I believe so.

Q Weren't you interested In identifying the female member of that team?

A Yes, I was.

Q Hadn't Mr. Windram in fact been given a description of the female the day after the robbery?

A I do not recall.

Q You don't recall?

A No.

Q I show you Government's Exhibit 12, which is a report transcribed March 1, 1976 and dictated February 26, 29. It is a three-page report.

I ask you to quickly peruse it and ask you whether it refreshes your recollection whether Windram spoke of the female and in fact gave a description of the female?

A Yes, he did give a description of the female.

THE COURT: Were you there at the time of that interview?

THE WITNESS: No, I was not.

Q Certainly by March 19, which was some three weeks after the incident, you knew, did you not, that a woman had been described and further that a woman had been arrested?

A Yes.

Q Had Windram ever told you that he could never recognize the female?

A No, he did not.

Q Didn't you show Windram a female's photo lineup?

A In the first or second one.

THE COURT: In either one?

Q In either one?

A In the first one I don't believe we had, the office had any photographs of James Green's wife.

Q That was before the arrest. How about after?

A After the arrest spreads of photographs of women, including Debra Green's picture, had been shown at some of the banks. When I came to show my photograph there were two further photographs of her available. There was something printed up in the photo lab, but I wanted to show my spread to Green right then, but I was on trial in another case and I was being reassigned. I showed the photograph to James Green, but I didn't have one of his wife.

Q Do you know if any of your colleagues did go to Windram and show him a photographic spread of women?

A As far as, when I was reassigned the case, I don't know.

Q Have you had occasion to study the reports

filed in this case by the other FBI agent?

A No.

Q Do you know Larry Hammond, who was one of the men depicted on a photographic spread?

A No, I do not.

Q Do you recall whether when you showed these photographs to Mr. Windram the inscriptions on the back of these photos were there or whether they had been made since?

A The only thing that has been added is initials ahd dates.

Q Were there any surveillance photos taken at First National City Bank on February 25?

A Bank cameras were working. We picked up the film the next morning. We ran it through the viewing machine. It was blank. We think that the film was not developed and consequently was exposed when we attempted to look at it.

Q Do you know whether, as to February 25, Mr. Windram has been shown any photograph of Debra Green by yourself or anyone else?

A He was never shown a photograph by me.

Q Is there in the FBI a facility for composite pictures?

A You mean to take a series of pictures and make them into one large picture?

Q Yes. Do you have composite artists at the FBI?

A Composites are usually used for artist's conceptions. As far as using it for a photo spread, it is possible.

Q There is a device with a machine tht --

A You can photograph a group of pictures and get one photograph, yes.

Q That is not what I mean. Isn't there in police work a gimmick which has like 25 kinds of noses?

A Yes, right.

Q Five kinds for heads, chins and so forth?

A That is the artist's composite.

Q Does the FBI use that sort of mechanism?

A Yes, it is used sometimes.

Q Do you know whether it was used in this case?

A It wash't used by me and I don't think it was used. MR. THAU: Thank you.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Showing you H-10, you have indicated that the witness selected a picture of James Green and Toby Raines.

A I think these pictures are mixed up. Yes, they are. The spreads are mixed up.

THE COURT: There should be one photograph of Toby Raines' among both of thes exhibits.

Could you pick that out among the whole series of exhibits?

THE WITNESS: This picture belongs to this spread. This one is in the wrong place. This is the one.

THE COURT: Could I see the photograph of James Green from the first spread?

Q With respect to the photograph which you have identified as Toby Raines, does he have a mustache or any other facial hair?

A No, he does not.

Q And if this was placed in a second spread that you showed to Mr. Windram it would be one of the few photographs, in fact the only photograph without facial hair; is that correct?

A That is correct.

MR. REILLY: No further questions.

THE COURT: Mr. Thau?

MR. THAU: No recross.

MR. MITCHELL: None.

THE COURT: All right. You may step down.

(Witness excused.)

MR. REILLY: The next witness is Robert Windram.

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R O B E R T W I N D R A M , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Windram, were you employed by the First National City Bank on February 25, 1976?

A Yes, I was.

Q At what branch?

A 250 Fifth Avenue on the corner of 28th Street.

Q What was your position there?

A Teller.

Q Were you working that day?

A Yes, I was.

Q Do you recall being the victim of a bank robbery on that day?

A Yes, I do.

Q About what time of day was that?

A 1.15.

MR. MITCHELL: Ask him to speak a little louder.

THE COURT: Please raise your voice, Mr. Windram.

MR. MITCHELL: What was the answer -- 1.15?

THE WITNESS: In the afternoon, 1.15 in the afternoon.

Q To the best of your recollection, what transpired?

A What happened?

Q Yes.

A I had a few people on line and I was doing a couple of transactions. There was a couple of people on line. There was two people there, those two people there. The gentleman was off the line and the girl was on the line. The girl came up on the line and she showed me the note. The gentleman came up to me and showed me the gun. The note, it says, looked like, "This is a stickup."

I couldn't tell because it was partially covered and that is when he told me to give the money to him. I told him no. He insisted again, and then I gave him the money, put it on top of the counter. She took it. She put it in a bag. They left, and

then I went after them.

Q What was the distance between you and these two individuals at that time when they were in the bank at the counter?

A A foot, a foot and a half, just the length of the counter.

Q How were the lighting conditions on that day?

A Very good.

Q Did you have any difficulty in observing them?

A No.

Q were they wearing any concealment on their face?

A No.

Q No ski masks or anything like that?

A No.

Q How long a period of time passed between when they first came to you and they began to show you this note and when they left the bank?

A 15, 20 seconds.

Q Was that the entire transaction?

A Yes.

Q Is that your best recollection?

THE COURT: From the time you first laid eyes on them to the time they turned away fro you.

A Not from when I first laid eyes on them. Four, five minutes.

Q When did you first lay eyes on them -- where were they at that time?

A She was on the line and he was off to the left, a little farther back, about five, six feet.

Q Did you look at them while you were doing other business?

A Yes, I did.

Q Did you have a conversation with anyone else?

A Yes. I told the next man.

Q Did you tell the teller next to you anything concerning these two people that were in the bank?

A Yes, I did.

Q What did you tell him?

A I told him I thought they were going to hold me up; that I got ready to hit the alarm when I got back. He thought I was joking. I was serious.

Q You returned to your station?

A Yes.

Q Then the female came to the teller's station; is that correct?

A Yes.

THE COURT: She reached the front of the line,

I guess?

THE WITNESS: Yes, she did.

THE COURT: She had been on the line and there were other people ahead of her?

THE WITNESS: Yes.

THE COURT: Were you observing her while she was still on the line and you were taking care of the other customers?

THE WITNESS: Yes.

Q Did you observe the individual male at that time?

A Yes.

Q After these two individuals left the bank what did you do?

A I locked up my drawers, I went over the counter and I went out the side entrance to see which way they ran. They ran up towards Broadway. Then I followed them.

Q Did you continue the chase?

A Yes.

Q Did you see both of them as you were going up towards Broadway?

A Both of them up towards Broadway. They then made a right down towards 29th Street. I didn't see

the girl any more. I saw the guy. He was on the other side of the street.

Q Did there come a time when you saw him close, at close range?

A Yes, like at a distance between us (indicating) --

Q Is that about 15 feet?

MR. REILLY: Will you stipulate to that, Mr. Mitchell?

MR. MITCHELL: Approximately that.

THE COURT: Very well.

Q Where did you see the male bank robber at that time?

A In the subway station, right around the corner on 29th Street and Broadway.

Q Tell us what happened?

A The subway was closed downstairs. That is when we came face-to-face with each other.

Q Where were you standing?

A I was up on top. That is when he ran by and we went up the block towards Seventh Avenue. That is when I stopped.

Q When you were at the top of the subway stairs, where was the bank robber?

A Down further.

Q Were you looking at him face-to-face?

A Yes.

Q Did you pass any words between you; did you say anything?

A Just that I was going to keep chasing him, that was it.

Q How did he get past you?

A I knew he had the gun, so I let him go by.

Q And then did you ever see him after that?

A No. No, you know, just going up the block and that was it. Then I stopped chasing him.

Q Did the FBI come to interview you on February 25, 1976?

A Yes, they did.

Q Did they ask you for a description of the two bank robbers?

A Yes.

Q Were you able to give them a description?

A Yes.

Q Of the male and the female?

A Yes.

Q Did there come a time when an FBI agent came to the bank with a photograph of various individuals?

A Yes.

Q When was that?

A I don't remember the dates. When was the day after the robbery and then a few eweks after. I don't remember the exact date of that one.

Q Did he came twice?

A Yes, twice.

Q On the first occasion, what happened? Where did you meet him?

A At the bank.

Q In what area?

A At the operations office.

Q Tell us to the best of your recollection how the FBI agent conducted himself; what did he do?

A Showed me the identification, told me, you know -- you know, he was going to set up the pictures and told me to pick out the best that I could do.

Q What did you do?

A I didn't pick any of thse pictures out. I told him that they weren't any of them.

Q Did he ask you whether anybody resembled the bank robber?

A Yes, he asked me if dnybody resembled.

Q Did you pick anybody out after that?

A I don't think so.

Q There came a second time; right?

A Right.

Q What happened then?

A That is when I picked out the picture. There was more pictures, seven or eight. I was picking through them. The couple that I thought I recognized I held off to the side, to the end. That is when I made it definite.

Q How long a period of time passed between when he showed you these photographs and when you picked out the one picture?

A A couple of minutes, that is all. Just looking them over.

Q I show you H-11 for identification and ask you whether you recall which photograph you selected of these photographs?

A (Indicating.)

Q And you are pointing to a photograph which is a photograph of James Green. Does it have your signature on the back?

A Yes, it does.

Q Is it dated 3/19/76?

MR. REILLY: Let the record reflect that it

too the witness five seconds to make that selection.

Q When had you seen that group of photographs prior to Mr. Reilly showing them to you just now? When was the last time before that?

THE WITNESS: When the FBI came, that was it.

THE COURT: That was back in March, was it?

THE WITNESS: Yes, it was in March.

THE COURT: So it has been about three months since you saw those photographs?

THE WITNESS: Yes.

Q Did the FBI agent ask you to sign a statement after you made that selection?

A Yes, he wrote up -- he asked me and he was writing it up and then I signed the statement.

Q Did you read the statement before you signed it?

A Yes, I did.

MR. REILLY: I would like to mark as H-12 a one-page statement commencing with the words "I, Robert Windram."

(Government's Exhibit H-12 was marked for identification.)

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Q Was that the statement that you signed after the view on that day? Take your time.

A Yes, this is it.

Q Did it have any photographs of any females at that time?

A I don't believe so, no.

Q Has anybody shown you any photographs of females in connection with this bank robbery?

A No.

MR. REILLY: No further questions, your Honor.

CROSS EXAMINATION

BY MR. MITCHELL:

Q There was a point where you were behind the individuals -- that is in the street -- who you claimed held you up; is that right?

A Yes.

Q Could you judge their height at that time?

A From the description I gave. The description was from the bank.

Q From the bank? What about when you saw them in the street, wasn't that before you were interviewed?

A Right, that was before.

Q Was there anything different between the descriptions, as you say, from the bank or when they were in the street or were they the same height?

A The same height.

Q What height did you give for the male?

A About five feet ten, I think it was.

Q Five feet ten?

A Five feet nine, five feet ten. I gave between five feet nine and five feet ten.

Q What weight, approximately?

A It was 140.

Q Do you remember being interviewed by the special agent where he asked you to give a description of the age, height and weight of the individual male, on the 25th?

THE COURT: When you say the 25th, I assume you mean February 25th, the date of the bank robbery?

MR. MITCHELL: Yes.

Q Do you remember an FBI interview on that day? Do you remember telling him what age the man was approximately?

A Early 20's.

Q And the height? You have told us it was somewhere between five feet nine and and five feet ten?

A Yes.

Q And the weight somewhere between 140 and --

A In the 40's.

Q Will you take a look at the age, height and

weight according to the way the agents say you gave them that information and tell me if you want to change your testimony?

A To say that this is it?

Q Which is correct, is it the five feet nine or ten or five feet three and four as you said on the 25th of February?

A What is on the paper.

Q Five feet three or four?

A That is ight.

Q And the age is between 17 and 19, not in the 20's; right?

A That is right.

Q And the weight 125 to 130, not in the hundred forties?

A Yes.

Q According to your description at the time, was the female taller than the male? If you don't remember I'll show you what you said.

A Show me what I said.

Q Here (indicating).

Does that refresh your recollection as to what you told the agent as to the height of the female?

A Yes.

Q What was the height?

A The height?

Q Yes.

A About five feet six.

Q When you were behind them the female was taller than the male; is that correct?

A I couldn't tell you that.

Q Couldn't tell?

A No.

Q So that the only description you gave us is what you saw in the bank; is that correct?

A That is right.

Q When you first were shown the photographs, which was on February 26, I believe, 1976, the day after the holdup, you said there were two individuals that -- no, first you said you couldn't recognize anybody; is that correct?

A Yes.

Q Did you say anything to the agent at that time about if I could see their height or a full photograph of them I'd be able to make it?

A No, I didn't do that.

Q What did the agents say to you when you said you couldn't pick anybody out?

A They didn't say nothing.

Q Didn't ask you to look again?

A Told me to look to see if I could -- if I could see something close to their looks and then to initial them.

Q Did you find anybody that was close to their looks?

A Yes, two pictures.

Q At that time you weren't sure you were just guessing that they looked --

A I wasn't guessing. You know, I give him something else.

Q Something else?

A Yes.

Q In other words, you would have picked out any two?

A No, not any two. The two that were closest.

Q Other than the bank robber which man did you pick out as being in the second one?

A Other than the bank robber?

MR. MITCHELL: Yes. Note the time, Judge.

THE COURT: Indicating Robert Hairston.

Q Is that the man you told the FBI agent looked

like the man that held you up?

A Yes.

Q You are sure now that that is --

THE COURT: Let him answer. You have one question pending.

A Yes, I think that is one of the pictures.

23 THE COURT: You think that is one of the pictures?

THE WITNESS: I think that is one of the pictures that I picked out.

Q Any of the others?

A Wait. This guy (indicating).

THE COURT: Indicating Toby Raines.

Q Abybody else?

A No.

Q When you got the second group of photographs, which was about the 19th of March, did you notice that the pictures that you had picked out as being similar in the first photographs were not in the second lineup or group of pictures?

A I didn't notice that.

Q You didn't notice that one was missing?

MR. REILLY: The witness is shaking his head.

THE COURT: Yes, in the negative and now has

said --

A No.

THE COURT: -- no.

Q Now, on the 26th of February, 1976 which of these two photographs did you pick out as the one that you said was similar to the man?

A This one (indicating).

Q This one? The one with the goatee; right?

A Yes.

MR. MITCHELL: Will the Government stipulate that comes from the March 19th photograph and not this one, which was on February the 25th?

MR. REILLY: I don't think it needs stipulation.

MR. MITCHELL: It is obvious to the Court.

THE COURT: Yes, the Court has observed it.

You had two photographs of the defendant which you placed in front of the witness and you asked him which one he picked out on February 25 and he picked the photograph and the Court's recollection is that is the photograph that he picked out as the defendant on March 19th.

MR. MITCHELL: No further questions.

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CROSS EXAMINATION

BY MR. THAU:

Q When the FBI agent interviewed you on February 25 you told him what you told us about the presence there of a woman; is that right?

A Yes.

Q And you in fact described that woman in some detail, didn't you?

A Yes, I did.

Q Did the agent ever ask you on February 26th whether you ever saw that woman again you could recognize her?

A I don't remember.

Q Was it your judgment at that time that if you ever saw that woman again you couldn't recognize her?

A I could recognize her, but not as much as I would be able to recognize the gentleman.

Q You first caught sight of this man and this woman, you say, as you were attending to the business of other customers; is that right?

A Yes.

Q Now, that line on which they were, is that one of these snake-type lines or did each teller's window have its own line?

A Have your own line.

Q May I take it that the line forms directly in front of you?

A Yes.

Q Indian file, so to speak?

A Yes, supposed to be.

Q So with respect to how it is supposed to be, the first person sort of partially hides your view of the second person and so on and so forth; right?

A Yes.

Q How far down the line were these two suspicious looking characters when you tell us you first noticed them or their behavior?

A There was two people ahead of the girl. The man wasn't on line.

THE COURT: He was standing off a little bit to the side?

THE WITNESS: Yes.

Q Were there other persons in line who had companions, so to speak, to their left or right or were they all single?

A No, they were all separate.

Q What about the behavior of these two people which aroused your suspicion before a note was shown you

or the --

THE COURT: What aroused your suspicion? What did you say, see or hear?

THE WITNESS: Just, you know, you could feel something, like.

Q You felt something? There was nothing that you could really put your finger on in terms of what either one was doing or saying; is that right?

A Yes. The way he was standing, looking down, because the guard was at the bank that day.

Q So the male was looking at the guard?

A He was down the Fifth Avenue side. But there is two sides, Fifth Avenue, and then you have to go running along.

Q So the way the male's eyes were going made you suspicious?

A Yes.

Q If the male had not been there looking the way you say he did -- there was nothing unusual about the female; is that right?

A No.

Q Just another woman waiting in line; is that right?

A Yes.

Q Were they talking to each other at that point, if you recall?

A No.

Q About how far in front would you say they were when the male's looks attracted your attention?

A Me? Five feet back from the window; five feet back from the first cage.

Q Was it at that point that you told your colleague something or other?

A Well, I was taking care of another customer. I had to go to another part. When I went behind I told him "Just get ready. There is a suspicious" --

Q Is it your instruction in a bank to make a mistake on the side of safety, let's say, so that when you become suspicious you set off an alarm?

A A suspicious alarm.

Q What?

A We have a suspicious alarm.

Q Was it at that point while these two people were still third on line that you set off your suspicion alarm?

A No, I didn't have one at my window.

Q How many such alarms are there along the line of tellers?

A Each teller has two alarms, one on the bottom and one in the cash drawer and then they have the suspicious alarms, but not every window has them.

Q How far was the suspicious alarm from where you were?

A The next counter.

Q Could you read that suspicious alarm from your -- when you say next counter, you mean next window?

A Yesd

Q Could you reach that alarm from where you were?

A Not unless I walked over to it.

Q You did walk over to speak to him, didn't you?

A No.

Q You shouted over to him, "These people are suspicious"?

A I told hm. I was doing a transaction and when I walked behind him I told him.

Q Behind the other teller?

A Yes, because there was a machine that I had to do another transaction.

Q When you walked behind him was there anything that separated you, where you stood, from his suspicious alarm?

A His body.

Q He does not weigh 500 pounds, this friend of yours?

A No, about 200.

Q You could have reached and pushed his suspicious alarm, could you?

A No.

Q Couldn't you get him out of the way and say, "I'm suspicious, I want to push the button"?

A That is why I told him.

Q And he refused?

A He didn't refuse. He thought I was fooling around.

Q You were standing directly behind him, and your instructions are if you get suspicious you push the button; right?

A Yes.

THE COURT: I don't see that this is relevant to the identification. Again you are making a valiant attempt, preparing yourself for cross-examination.

MR. THAU: In this case, your Honor, I think it is closer.

THE COURT: Yes, but you still haven't hit the alarm.

MR. THAU: I'm waiting to see what he did.

THE COURT: All right, go ahead.

MR. THAU: I won't be long.

Q You saw that this other teller was not pressing the alarm when you told him to press it; right?

A That is right.

Q And you obey regulations, don't you?

A Yes.

Q And therefore why didn't you press the alarm yourself?

A The alarm was faulty.

Q Faulty?

A Yes.

Q You knew that to be so?

A I knew it.

Q Why did you ask him to press it in the first place if you knew it to be faulty?

A To press the suspicious. That doesn't make noise. The alarm makes noise.

Q That is the alarm was faulty?

A Yes.

Q Why didn't you press the suspicious button?

MR. REILLY: Objection.

THE COURT: All right.

Q The agent never showed you picrures of a woman?

A No.

Q On the second occasion when the agent came with the pictures of the male, did he tell you the name of the person he picked out?

A No. The name of the person?

Q Yes.

A No, I don't think he told me the name.

Q Do you know whether any surveillance photos were taken of that February 25th bank robbery?

A No, they didn't tell me there were any, but I'm pretty sure I got them because I hit the alarm when they left the window, so I'm pretty sure they got the pictures when they turned their backs to me.

Q For how long altogether were these two people in front of you directly, facing you?

A 15, 20 seconds.

Q Where was the camera located?

A To the left side.

Q Whose left-hand?

A My left.

Q Behind you?

A On the wall. No, on the wall.

Q It was impression, was it not, that the female

was perhaps two or as much as three inches taller than the male; is that correct?

A That is what I told the FBI.

Q Yes. Let me ask you this;

Was your recollection of what these people looked like better on the very day of the incident than it is today?

Yes, I think it was better on the day of the incident.

Q I show you Government's Exhibit 3512 and I call your attention to these two sets of combinations, the female here and the male here, and I ask you whether looking at this refreshes your recollection whether you told the agent that the female was five feet six inches and the male five feet three to five feet four?

A Yes, as I said before, yes.

Q And as to the weight, was it your estimation that the woman was between 130 and 140 pounds?

A Yes.

Q And the male was 130?

A That is the information I gave that day.

Q So the woman may have been as much as three inches taller and 10 pounds heavier than the male in your estimation; is that right?

A That is right.

THE COURT: Regarding the matter of weight, how were these people dressed when you saw them? This is in February. How were they dressed?

THE WITNESS: They had coats, you know, jackets on. The girl had a hat.

THE COURT: Were their coats long and full or were they short jackets?

THE WITNESS: Short jackets, leather jackets.

THE COURT: Leather jackets and the girl had a hat?

THE WITNESS: Yes.

THE COURT: What did the hat look like, if you remember?

THE WITNESS: It was like a knit, one of those knit hats.

Q They both had leather coats?

A Yes.

Q Were they sort of clinging leather coats or baggy ones?

A Looked like they fit all right.

Q Well fit?

A Yes.

MR. THAU: Thank you.

MR. REILLY: I would like to introduce in evidence H-15, if the defense has no objection. They have both relied on 3512, which I have marked as H-13 for identification, which is a statement again by Mr. Windram on the day of the bank robbery concerning the description of the two bank robberies.

MR. MITCHELL: I have no objection.

MR. REILLY: I'm only offering the physical description of the two unknowns which starts at the second page and concludes on the third.

MR. MITCHELL: I have no objection.

MR. THAU: No objection.

THE COURT: H-13, the description only, received.

(Government's Exhibit 13 was received in evidence.)

xx MR. REILLY: I have no further questions, your Honor.

THE COURT: Anyone else?

MR. MITCHELL: No, your Honor.

I just wanted to inform the Court that the testimony of Mr. Windram, if it is admitted by the Court would only be offered as a similar transaction, so that there are different rules that would apply in determining

the admissibility of this. In other words, if it is speculative it doesn;t become a question of fact for the jury.

MR. THAU: I go along with that.

THE COURT: Yes. I see that the defendants are not charged in the indictment, which contains five counts with the robbery of this branch of the First National City Bank.

MR. REILLY: That is correct.

THE COURT: I'll keep that in mind. So that would be a similar act?

MR. REILLY: That is right.

Your Honor, our next witness, is Jeffrey Marlen Vogt.

THE COURT: Before we excuse Mr. Windram, what do you suggest as to his return?

MR. REILLY: If we could have him return tomorrow, I think 2 o'clock will be sufficient.

THE COURT: Would you do that? You are excused for now and directed to return tomorrow at 2 p.m.

(Witnss excused.)

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JEFFREY MARLEN VOGT, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Vogt, are you with the FBI?

A I am.

Q How long have you been a special agent?

A Almost eight years.

Q Are you presently assigned to the Bank Robbery Squad?

A I am.

Q How long have you been so assigned?

A A little over three years.

Q Did you investigate a bank robbery at the Emigrant Savings Bank alleged to have taken place on February 27, 1976?

A I was involved in the investigation, not at the time of the robbery, on the date of the robbery.

MR. THAU: This too, I believe, is a similar act rather than charged.

MR. REILLY: That is correct.

THE COURT: Very well.

Q Did you go to the Emigrant Savings Bank subse-

quent to the date of the robbery?

A I did, on March 3rd.

Q What did you do?

A I spoke to a young lady, a victim teller at the bank, and showed her some photographs and in reference to the investigation we were conducting concerning the robbery on the 28th or it may have been on the 27th. Excuse me.

Q Who was the victim teller?

A I believe her name was Gail Farrier. I'm not sure of the spelling. F-a-r-r-i-e-r sounds correct.

Q Where did you see her?

A I saw her in the bank. Then we subsequently went to an interview room.

Q Did you show her a spread of photographs?

A Yes.

Q How many photographs were in the spread?

A I believe there were six in the photographic spread.

Q Was the photographic spread of males or females?

A Males only, Negro males.

Q Will you explain to us how you showed the spread to the bank teller?

A She knew that the question was in reference to the bank robbery and I set out the six mug shots, as

we call them, a photographic spread in front of her and asked her if she saw any photograph before her that looked like the robber or was the robber in her mind.

Q Did she select anyone?

A After a few moments she did select one photograph and she said that that most resembled the individual. However, to my recollection, she said she couldn't be positive.

Q Do you have that spread of photographs with you today?

A Yes.

MR. REILLY: I'm going to mark that as Government's Exhibit 13 for identification.

Q A spread of how many photographs is it?

A Six.

MR. REILLY: I'm sorry, the other was 13. We will mark this H-14, these six photos.

(Government's Exhibit H-14 was received in evidence.)

xx Q Which was the photograph that was selected by Miss Farrier?

A Photograph No. 4, the photograph of Green.

Q Did you not ask her to sign it in any way?

A No, I did not. She did not make a positive

identification and I did not ask her to sign it.

Q Did you make any notation that this was the photograph that she identified?

A I initialed it and dated it.

Q Did you initial and date the others?

A Negative. I just numbered.

MR. REILLY: I would like to show the Court Hearing Exhibit 14.

THE COURT: All right.

MR. REILLY: And offer that in evidence.

THE COURT: Any objection?

MR. THAU: No objection.

(Government's Exhibit H-14 was received in evidence.)

Q Did you have occasion to receive a surveillance camera photograph in connection with the Emigrant Savings Bank robbery?

A I did.

Q Did you take any photographs of that surveillance photography to the Emigrant Savings Bank when you saw Miss Farrier:

A Yes, I took one photograph.

Q Do you recall showing her that photograph?

A Yes, I did.

Q What did you state to her and what did she state to you?

A I mentioned to her that the photograph I was going to show her was a surveillance photograph from the bank robbery after she activated or the alarm was activated. I asked her if she recognized or knew anything about the individual depicted in a photograph which depicted a Negro male. She observed the photograph and said that the individual depicted was the individual that robbed her on the 27th.

Q Was this prior to the arrest of the two defendants in this case?

A Yes.

Q Do you have the photograph with you?

A Yes, I do.

MR. REILLY: We will mark this as Government's Exhibit H-15 for identification.

(Government's Exhibit H-15 was marked for identification.)

xx Q Did you ask her to sign the photograph after it was seen?

A I did ask her and she did sign it and date it.

MR. REILLY: After showing counsel this photograph I would like to offer it in evidence.

THE COURT: May I see the two prior surveillance photographs?

MR. REILLY: Yes, I'm showing the Court H-8 and H-9.

THE COURT: Is there any objection to H-15?

MR. MITCHELL: Just for the hearing.

THE COURT: For the hearing, of course.

MR. MITCHELL: No objection on the hearing.

THE COURT: It will be admitted in evidence for the purpose of this hearing only at this time and you may show it to counsel.

(Government's Exhibit H-15 was received in evidence.)

Q As of March 3, 1976 did you have any photographs of Debra Green in your possession?

A No.

Q Did you ever go back to the bank again to show any photographs to Miss Farrier?

A No.

MR. REILLY: I have no further questions.

CROSS EXAMINATION

BY MR. MITCHELL:

Q You interviewed Miss Farrier; is that right?

A I displayed the photographs to her.

Q Were you aware of her description of the individual male?

A I was aware that she had pointed out that it was a Negro male, yes.

Q As to height or weight?

A Just generally.

Q Were you aware that it was supposed to be someone between the height of five feet eight and five feet ten inches?

A Somewhere in that area, yes.

Q In making up the composite group of pictures which you first displayed to her were you aware of the height of the other individuals?

A Aware of the height? No.

Q Were you aware of their weight?

A Their weight? No.

Q Were you aware by this time that the individual who was supposed to hawve perpetrated the holdup had a short Afro?

A A short Afro, yes.

Q Would you say that this photograph, which is No. 3, is that of an individual with a short Afro?

A I would say that is about medium.

Q How about this individual? It has no number

on it?

A It has No. 15.

Q No. 5. How about him -- has he got any kind of an Afro?

A Very short.

Q Is that a baldy?

A His hairline is receding somewhat, yes.

Q Was it supposed to be of a Negro with a dark complexion?

A A dark complexion? No, I don't think he was dark. I don't remember exactly, but I -- I tried to make the complexions all the same as far as the photographs.

Q Would you say this was lighter than any of the others?

A I don't think he is much lighter than that (indicating).

THE COURT: Indicating one being not much lighter than 5.

THE WITNESS: Okay. I think the complexions of all of them are very close, in my opinion.

Q You spread them out, is that right, for the young lady to look at?

A That is correct.

Q At the time did you indicate to her that one of the men was the man who had held her up in the bank?

A No, no, I didn't indicate that whatsoever. I indicated to her to look at the photographs and tell me if she observed anyone that she recognized.

Q Recognized for what purpose?

A For the purpose of the robbery.

Q In other words, whether she recognized anybody that had held her up?

A Yes, that is right.

Q Did you indicate to her that this was to be a test for the purpose of identification or that it was simply a group of photographs and if she couldn't find anybody you'd come back with more, unless she eventually might or might not?

A We were trying to effect a valid identification. That was the purpose of the spread. She did not identify anyone there.

Q What did you tell her when you showed her those photographs?

A I asked her simply did she recognize anyone here that was connected with the robbery, and I was particularly interested In the Negro male, obviously.

Q She told you that she couldn't make a positive

identification; is that right?

A That is correct, to the best of my knowledge. It is in my 302 in the interview.

Q Did she also tell you that the reason she couldn't make a positive identification was that the photograph of No. 4, which is the alleged perpetrator, only resembled the robber?

A She told me he resembled the robber.

Q Didn't she say he only resembled the robber?

A I know that she said resembled and I put down what she said.

Q I show you the report.

A That would suffice.

"Photograph No. 4 only resembled robber."

Q "Only resembled"?

A That is correct.

Q Did she tell you that the hair of the individual was of reddish tint?

A No, she didn't, not to my recollection.

Q Do you know that she told another agent the hair was black, of a reddish tint and short cropped?

A I'm aware of that. The photographs she observed in the spread were black and white.

Q But the person was supposed to have a reddish

tinted hair; is that right?

A That was the description she gave, yes.

Q When you came in for the second identification with the surveillance picture, did you tell that this was a surveillance picture taken in the bank?

A That was the surveillance photograph during the robbery on the --

Q Did you tell her that?

A Did I tell her that? Yes.

Q So she knew that this was the photograph of somebody who was supposed to be in the bank at the time?

A Somebody who was definitely in the bank at the time subsequent to the robbery.

Q Subsequent to the robbery?

A That is correct, within a few moments after the robbery.

Q Were there other photographs taken --

A Numerous photographs. There were six surveillance photograph cameras, to my knowledge, at least six and the films were reviewed. Is that what you are saying?

Q Yes.

A And the films were reviewed and this individual came from the area of the young lady's counter and this was the reason this photograph was selected by myself at

the ofice, because he most fit the individual described by her and other people in the bank, and we were simply showing the photograph to her to get a correct identification. We don't want to look for the wrong man.

Q Who put the arrows on the front of the photograph?

A I did. That was subsequent to the photograph being shown to her. That was for the purpose of shots being made, duplicated, and sent out to other officers so that the photographer upstairs would know what individual we were interested In.

Q Was there any other black individual in the photograph?

A I see none.

Q So that you sent it to the photographer and you didn't have to mark it?

A I don't want the whole thing. Sometimes the photographer upstairs -- the surveillance photograph will indicate somebody in the background and I just want the photographer upstairs to know which individual I'm interested in. He doesn't know the details of the case as you or I would.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Agent, did Miss Farrier, this teller to whom you showed this photo spread, say anything about a woman being present on March --

A I don't recollect her talking about the woman, because I was mostly interested in the male. I didn't ask her anything about the woman. She was interviewed previously.

Q And before interviewing this lady, Miss Farrier, did you acquaint yourself with the reports filed by your colleagues following their original interview of this teller?

A In reference to what -- the description of the individual?

Q The bank robbery.

A Reports don't come out -- within three days the reports --

Q Had you at the very least acquainted yourself with the bare information of this case and did you know that you were dealing with a man and a woman?

A That is correct.

Q And you know that on March 9 Debra Green was arrested in this case?

A I don't know the exact date. I know she was subsequently arrested.

Q About a week after you showed these photos, March 12. When is it that you went with this photo spread to the teller?

A On the 3rd of March, I believe.

Q Did you on March 12th or subsequent thereto go back with the photos of women, including this defendant's photo?

A No.

Q To show to this teller?

A No.

Q Did you ask that a live lineup be conducted in which --

A No, it wasn't my case then. I became segregated from the case after the arrest, so I had nothing to do with the arrest or any investigations subsequent to the arrest.

Q You told Mr. Mitchell that a good many surveillance photos were taken?

A Copies were made. Is that what you are seeking to know?

Q There were a number of separate frames of surveillance photos made at the bank on February 27?

A Yes.

Q Have you those in court for us to look at?

A No, I don't.

Q You selected the one I'm holding now?

A Yes.

Q Which is H-15, which is in your judgment the clearest of the male photos?

A Because it fits generally the description of the clothes worn by the victim teller and who came from the area immediately after the alarm was activated.

Q In reviewing the other frames did you come upon a woman who also --

A No.

Q -- fit the teller description of the woman?

A No.

Q Sir, to your knowledge no one has identified Debra Green as a participant in the Emigrant Savings Bank robbery of February 27?

A To my knowledge.

Q No one has?

A No one has, not to my knowledge.

MR. THAU: Thank you.

THE COURT: Anything further, gentlemen?

MR. REILLY: No, your Honor.

MR. MITCHELL: Just one question.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Were you aware that the description given by the teller was that of a man wearing a dark blue or black short leather jacket?

A Short leather jacket?

Q Yes.

A No, I wasn't, no, not to my recollection.

Q See if this report Exhibit 3518 refreshes your recollection as to the description of the male.

A This is by another agent you are speaking of?

Q Yes.

A This is by Lily Yu from the First National City Bank.

MR. MITCHELL: I'm sorry, I made a mistake, your Honor. I'll withdraw the question.

MR. REILLY: NO questions, your Honor.

THE COURT: Will you step down, Mr. Vogt. Thank you very much. You are excused.

(Witness excused.)

MR. THAU: In light of this agent's testimony, may I inquire of the Government whether on this similar act robbery they intend to have an in-court identification

of my client presumably by is teller Farrier? I think it would be very unfair, it would be speculative at best. We learn here that this woman has never identified her. You can't just bring witnesses after witnesses hoping that they will identify my client.

MR. REILLY: We intend to do so and you and Mr. Thau will certainly learn from Mr. Farrier's testimony the length of time she observed the defendant James and Debra Green.

MR. THAU: My contention is that so far as forgetting -- and Mr. Reilly can correct me -- I think Miss Farrier never identified my client either in the flesh or in photos. Now, either I'm correct or incorrect. Mr. Reilly can tell us.

MR. REILLY: The fact is that there has not been a line-up nor photo identification, which does n't detract from her ability to identify from the stand.

MR. THAU: We don't know. In court she is the only black woman seated at defense table, of all places in the courtroom. This hearing will be the very fir arena.

"Do you see the woman here in court who robbed you on such a day? Who is she? You've got to point to the person, not Miss Kruger and not Mr. Mitchell

either."

Under those circumstances, unless Mr. Reilly can say that she has pointed this defendant out on a prior occasion, and I might want to look into the fairness of that procedure, I think he should just forget about this particular witness with respect to my client. You are dealing with a similar act and --

MR. REILLY: If Mr. Thau wishes to have photo identification similar to other photo identifications we have shown to other witnesses where his client is included in that --

MR. THAU: I think it is a little late in the Government's game for this sort of business.

THE COURT: I think it is a little late, frankly, for the objection to be raised, Mr. Thau, unless you didn't know of this sooner.

MR. THAU: I didn't know.

THE COURT: This trial was supposed to begin today.

MR. THAU: Your Honor, I didn't know that an agent would say that as far as he knows this witness Farrier never identified my client in any manner.

MR. REILLY: Mr. Thau never asked for a lineup in this case.

MR. THAU: That is neither here nor there. I'm not the one who should ask for a lineup necessarily. I'm saying that this woman cannot be brought into court on a similar act, of all things, rather than a charged count and speculatively be asked:

Do you see the woman who was in your bank on that day?

THE COURT: Are you saying, Mr. Thau, that a lineup is a constitutional requirement; that each defendant is constitutionally entitled to have a lineup?

MR. THAU: No, I'm not sure that it is essential. All I'm saying is that this hearing is to determine the suggestibility, if any, of a lineup or a show-up that was held. All right.

Now, it is obvious that with respect to my client no such was held. Under those circumstances why should this woman take the stand and for the first time identify my client, who sticks out like a sore thumb. She is the only person in this courtroom who fits her description in terms of age and sex and race.

In addition to which she sits at counsel table. You can't tell us the suggestibility of something that wasn't held to begin with.

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MR. REILLY: My answer to that is that Mr. Thau had his remedies if he thought there was such trouble. It is somewhat premature to decide the issue at this point in the absence of Miss Farrier, whose testimony would be relevant to such decision if she spent any particular time looking at this defendant during the course of the robbery. Therefore there is good reason why she would not make an irremedial misidentification here in court.

MR. THAU: I would ask that the defendant be seated in a public part of this courtroom surrounded by young women generally her age, coloring and weight.

THE COURT: You want a lineup; is that right?

MR. THAU: That is right. As far as this witness is concerned, if your Honor is going to press forward with the hearing as to Miss Farrier, then I will ask for a lineup, but only if your Honor decides to press forward. If your Honor agrees with my objection, in that event Miss Farrier will not testify as to my client.

THE COURT: How long have you known about this situation?

MR. THAU: The fact that Miss Farrier has never identified her?

THE COURT: Has never been shown photographs.

MR. REILLY: First of all, I have shown Mr. Thau all the available surveillance photography. As he knew, there was no available -- for this bank, I showed him the one of Mr. Green only and it was obvious to him then that Mrs. Green was not pictured.

With respect to other identifications I think early on in this case Mr. Thau was provided with materials that demonstrated -- in fact, I believe I made available to him at an earlier date the statement of Miss Farrier with respect to this witness.

MR. THAU: Your Honor, I filed --

THE COURT: I heard both of you.

If I adjourned this hearing now could you have a lineup at the MCC forthwith?

MR. REILLY: Your Honor, I think it would be possible. I must say I do not know that it could be done forthwith. I have never dealt with the MCC. I know it is difficult for such things to be done on short notice.

THE COURT: Could it be done before we reconvene?

MR. REILLY: It seems to me it can be done at 9.30.

MR. THAU: I have a sentence tomorrow.

I have been reviewing once again Miss Farrier's statement and I see nothing in here saying that she had never been shown the women's spread. There is nothing in here to that effect.

THE COURT: I think under the circumstances, in view of the hour and what I have heard, if the Government wishes to press the matter of an in-court identification of the defendant, which will certainly have an impact in this very serious case, in view of Mr. Thau's request for a line-up I think that one should be conducted, assuming that the requisite number of females, black females, would be available for a lineup between now and tomorrow morning at 9.30.

Could that be done?

MR. REILLY: I will try my best, your Honor.

THE COURT: I would suggest that we withhold Miss Farrier as a witness. If it could be done in the interim, I think it should be done, and if it is a lineup, which Mr. Thau has had an opportunity to participate in. He may have no further objection on the matter and if he does have objections, it seems to me the trial could go forward and we could take Miss Farrier's testimny individually outside of the presence of the jury.

Would that be satisfactory to you, Mr. Thau?

MR. THAU: The suppressional issue -- I think that the Court ought to exercise its discretion in disallowing the in-court identification of Miss Farrier.

THE COURT: I will not do that. All I'm going to do is afford you a lineup, which is what you have asked for, and if she identifies her in that lineup and you are there, that evidence will go before the jury.

MR. THAU: All right. In that case we'll have argument.

THE COURT: Mr. Reilly, I would suggest that we hold Miss Farrier since I know you have numerous other witnesses and that you arrange for a lineup.

MR. REILLY: Yes, your Honor.

I will ask Mr. Miller to advise --

Is your Honor going to take a break?

THE COURT: Yes, we will take a break at this time of approximately ten minutes and we will then proceed until 4.30.

(Recess.)

THE COURT: Bring your next witness in, please.

MR. REILLY: Agent Higgins.

EDWARD FRANCIS HIGGINS, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Higgins, are you with the FBI?

A Yes, I am.

Q How long have you been with the FBI?

A Five years.

Q Are you attached to the Bank Robbery Squad?

A Yes, I am.

Q Did you go to the First National City Bank at 40 West 57th Street in connection with a robbery there on March 5, 1976?

A Yes, I did.

Q What was the purpose of you going to the First National City Bank?

A The purpose was to contact a teller there, Miss Lily Yu so as to show her a bank surveillance photograph which was in my possession and to show photographic spreads.

Q What date was that?

A That was March 19, 1976.

Q Did you have photographic spreads of any

females?

A Yes.

Q Did you have photographic spreads of males?

A Yes, one of each.

Q Were the defendants James Green and Febra Green included in those two spreads?

A Yes, they were.

Q Do you have those spreads with you?

A Yes, I do.

Q Would you explain what you did when you got to the bank in connection with these photo spreads?

A With the photo spreads?

Q Yes.

A I called Mrs. Yu aside and I first took out of my briefcase the photographic spread depicting black male individuals and spread those pictures out on a desk in front of Mrs. Yu.

29 Q Was she able to select any of them?

A Yes, she did. She viewed the spread momentarily and selected the photograph of James Melvin Green and she stated that she believed he was the individual who had tried to rob her on March 5, 1976.

Q What about the female spread?

A After Mrs. Yu had initialed and dated each of

the pictures and signed and dated the reverse side of the picture of Mr. Green, I replaced the picture, that photographic spread in my briefcase, and removed the photographic spread depicting black female individuals.

Q Did you lay them out on the table?

A Yes, I did, in the manner that I described above.

Q What did You say to Mrs. Yu?

A I asked her if she recognized anyone in that photographic spread and she said she did.

Q I'm showing you [illegible] 16. Is that the male spread that you showed to Mrs. Yu?

A Yes, it is.

THE COURT: How many photographs are contained in that spread?

THE WITNESS: Six.

Q I'm showing you seven photographs, spreading them on this desk which have been marked H-17 for identification.

Are those the female photographs?

A Yes, they are.

Q Did she put her signature on the photograph of James Gfeen on the reverse side?

A Yes, she did.

Q You mentioned that you had a surveillance photograph with you that day. Do you have that with you now?

A Yes, sir.

Q Will you produce it, please?

A Yes.

Q Where did you obtain this surveillance photograph?

A That is a photograph from film which was exposed at the time of the attemped robbery of the First National City Bank on March 5.

MR. MITCHELL: What date was that?

THE WITNESS: March 5, 1976.

MR. REILLY: I'm marking this as Government's H-18.

Q Did you show this to Lily Yu?

A Yes. I did.

Q What did you say and what did she say?

A I asked her if any of the individuals in this photograph looked familiar to her and she said that the individuals on the right-hand were the individuals who attempted to rob her on March 5.

Q Did she say anything?

A I wrote a statement that she identified these

two individuals as the individuals who attempted to rob her and she then signed and dated the reverse side of the photograph.

Q Do you recall whether you showedthis photograph to Lily Yu before or after you showed her the various photo spreads?

A It was before.

MR. REILLY: No further questions.

I offer Government's Exhibits H-16, H-17 and H-18.

THE COURT: Do you have any objection?

MR. MITCHELL: No, your Honor.

(Government's Exhibits H-16, H-17 and H-18 were received in evidence.)

CROSS EXAMINATION

BY MR. MITCHELL:

Q You were going up there to see whether she could make an identification; is that right?

A Yes, sir.

Q And in order to give everybody a fair opportunity to see whether she could make such an identification you went up there with the spread; is that right?

A Yes.

Q Did you show her the spread and ask her whether

she could pick out the individual?

A Yes, I did.

Q And at that time she said to you, as you used the term, she believes he is the individual?

A Yes.

Q Is that right?

A Yes.

Q Let me see whether I can refresh your recollection as to whether she used the term "believed" or thinks."

A She said I think.

Q Did you probe her any further as to why she just thought it was the man; why she couldn't make a positive identification at that time on the spread?

A I'm sorry. Would you repeat the question?

Q When you received the statement from her that she thinks it is the individual, that was an indication to you that she couldn't make a positive identification; is that right?

A Yes.

Q And did you discuss the possibility of making a positive identification with her at that time, whether she wanted to know anything further to help her make an identification?

A No, she asked no further questions. I asked her how strongly she felt and she said, "I think that is he."

Q Did you go any further into what she meant by "think"?

A No, sir.

Q Tell me, this lineup that you had, was it based on similar individuals to the potential bank robber?

A Yes,sir.

Q Did you know the weights of thedse individuals in relation to the defendant's weight?

A No, sir, I had never seen any of these individuals in person, onlyt he photographs.

Q I show you out of Exhibit H-16 a photograph of Alvin McSwain, which was part of the spread, and ask you whether that is a clean shaven individual with an ordinary haircut or is it so distinctive that it was obvious it was not the defendant?

A Inasmuch as I was limited in the photographs from which I could draw to make up this spread, I felt that facial hair was a primary ingredient. All that facial hair, I believe, that facial hair is sometimes more subject to change and wouldn't be as much of a

factor.

Q Where did you get the idea that facial hair was of some value to Miss Yu? Did she tell you that the individual has a goatee or sideboards or a mustache?

A From the observation of the Green's photograph it appeared that the individual had facial hair, that is, from our surveillance photograph.

Q How about the type of hair? This photograph was taken on the 5th of March, wasn't it?

A Yes, sir.

Q And were you asking for an identification on the 19th?

A Yes.

Q The 19th of March. And did you expect the individual's hair to grow this much in that period of time, talking of his head?

A Photographs would have been taken at some time prior to the bank robbery, not some time later, so the length of someone's hair could have changed any time prior to the bank robbery.

Q Could the defendant's hair have changed from the 5th to the 19th? It would grow either longer or shorter, one or the other, right, or remain the same?

What I'm asking you is could his hair have

grown this long in two weeks?

A The witness had no means of knowing in what point in time the photograph was taken of any of these individuals, whether it was --

Q I'm talking of the photograph that was taken, the surveillance photograph that was taken on the 5th.

Did you have anybody with similar hair? IN two weeks how much hair can grow?

In other words, what I'm asking you is do you think that this was representative of the hair that was on the individual --

MR. MITCHELL: May I show it to your Honor?

THE COURT: You may.

Q That is McSwain. I'm talking of a fair representation. Or this of Copeland with long hair or Sebring with long hair. Then the weight of the individual was supposed to be about 120 pounds. I see here 146, 170. Do you think that that was a fair representation? That is all I'm asking you.

A Yes, I do. The witness was not allowed to view the reverse side of these photographs.

Q I know that, but don't you think that that weight bears a relation to the face? In other words, a 120-pound individual doesn't have the face of 170-

pound individual as far as thickness and all that is concerned.

MR. REILLY: Objection, your Honor. The pictures speak for themselves in this instance.

THE COURT: I'll sustain an objection to the form of the question.

Q Do you think that by putting in a person who weighed 170 pounds you were giving the witness a fair representation to pick from or would the witness eliminate somebody who weighed 170 pounds by just looking at the individual picture?

A I don't think the witness could eliminate a person who weighed 170 pounds without knowing the height and it is impossible to know the right height from those photographs.

Q Don't you think the height would have been fairer if you had a lineup in which you had five or six individuals including the defendant -- he was in custody -- and the witness were asked to picked him out?

A Yes.

Q He had an attorney at that time. You could have asked for a lineup. Did you?

A No, I didn't.

Q Let me ask you this:

Having failed to make an investigation that satisfied you, you then presented the witness with Government's Exhibit 18, which was a surveillance photograph taken in the bank. Did you tell Miss Yu at that time:

"Here's a surveillance photograph taken in the bank at the time of the holdup"?

A No, sir. The surveillance photograph was shown prior to either photographic spread and I did not advise the witness that this was a bank surveillance photograph. I merely told her it was a photograph and asked her if anyone in the photograph looked familiar to her.

Q In other words, you never gave the witness an opportunity to pick somebody out of a representative spread. You first indicated a photograph to her, a direct accusation against the defendant --

THE COURT: Sustained as to form.

MR. MITCHELL: I will withdraw it.

Q Did you give her the identification photograph first and ask her whether she could make an identification? It was either yes or no, because this was in her bank. That is, it says on here Citibank.

You told her it was a surveillance photograph, didn't you?

A I don't recall telling her surveillance. There was no need to. I merely asked if the individual in the photograph looked familiar to her.

Q Can you tell me what this could be other than a surveillance photograph?

A It is obviously a surveillance photograph.

Q If she made the positive identification that you said she did, what was the necessity of having a spread thereafter, or are you getting things reversed? Did you have a spread first as you told me a few minutes ago?

A I never said that I had the spread first. I told Mr. Reilly, when he asked me, that I showed lhe surveillance photograph first.

Q You told me, if I recall, that you showed Miss Yu the surveillance spread first.

A I think you asked me about the showing of the surveillance -- of the photographic spread first and I responded to your question, and then you asked me if I showeda bank surveillance photograph, but, as I recall my testimony, whenever I indicated sequence there I indicated that the surveillance photo was shown first.

Q Is there anything on either one of your

reports that indicates which one you showed her first?

A No, there is nothing in the report.

Q Is it your testimony that having made a positive identification of the surveillance photograph she wasn't sure of the defendant; is that right?

A That is correct.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Agent, H-18 is the surveillance shot showing maybe a dozen people from which the teller picked out a couple as the couple that perpetrated this robbery; is that right?

A Yes, sir.

Q Attempted robbery.

A Yes.

Q Which people did she pick out?

A These (indicating).

THE COURT: Indicating the male and female defendants. They appear in the right center of the photograph.

MR. THAU: I object to your Honor characterizing the defendants.

THE COURT: I can see them. I can see them

very well as they sit in front of me and the likenesses are striking. That is the observation in this case of the trier of the fact.

Q In any event, may I describe them otherwise, though perhaps not contradicting the Court, as the female standing one behind the other --

THE COURT: Of course you can --

MR. THAU: The only black couple, toward the right-hand margin of the picture.

Q Now, it is after you showed this teller this photo and she identified that couple as the one which had attempted to rob the bank that you showed her H-17, the spread of females?

A Yes.

Q And you tell us that she could not at that time, Miss Yu could not pick out any one of these women; is that correct?

A That is right.

31 Q Would you say looking now at the photo labeled Debra Green, the photo which appears in H-18, that that photo is a good representation of what Debra looks like today; is it a clear and accurate depiction of what she looks like today?

A I would. I believe so.

Q As a matter of fact, that was a mug shot taken of her on the day of her arrest; is that right?

A Yes, it was.

Q And it is a sharp, clear, double photo of her right profile and her full face; is that right?

A Yes, sir.

Q Would you agree with me, Agent, that whether or not H-18 depicts Debra Green as the Court believes it does, certainly that photo with respect to the woman whom the Court takes to be Debra Green, that photo is not only considerably smaller but also less detailed and looks considerably less like Debra Green as she is in court today than H-17? Would you agree with that?

A Would I agree that it looks less like her?

Q Yes.

A No, I don't think I do.

Q Look at them both now?

A The only difference I can see is in size. Little difference in photographic quality. I would say that the surveillance photograph is clear enough for purposes of identification.

THE COURT: I would add there appears to be a slight difference in the hair appearance between the female in the surveillance photograph and the defendant

as she appears before the Court today. There seems to be more hair in that picture and it is my understanding that in the close-up photograph she is wearing a bandanna because her hair had been cut quite short.

Q In the photographic spread of H-17 you included, did you not, a picture of Joanne Chesimard, didn't you, as NO. 6?

A Yes, sir.

Q And Joanne Chesimard was a lady who had gotten a good deal of notariety and whose picture had appeared prominently in the papers in the last two years or so; is that right?

A The case received considerable notariety. I don't recall seeing her photograph in the paper.

Q You know that most banks in New York have a composite, a panel of persons who are wanted for bank robbery; you are familiar with these little displays?

A Yes, sir.

Q And that not only are there pictures on there, composites, but the suspects' names even appear there?

A I don't believe the names appear.

Q All right, perhaps the names don't appear.

You know, don't you, that for a long, long time Joanne Chesimard's picture appeared on these com-

posite posters around New York; you know that, don't you?

A Yes, sir.

Q And you know also that shortly after one of these most wanted people who appear on these posters are apprehended the practice is to sort of cover their face partly with a notation "apprehended"; is that right?

A Yes, sir.

Q And of course you are aware that a bank teller of all people would be familiar with such signs since those signs would be sitting literally next to them during their working hours; right?

A Yes.

Q And you knew that Joanne Chesimard was apprehended a good two, three years ago and has been in jail ever since?

A Yes.

Q And therefore that on -- what was the date of this job? -- March 5, 1976 there wasn't any likelihood or chance that Joanne Chesimard was involved In this particular job; right?

A Yes, sir.

Q Nevertheless, you included her picture in the spread; is that right?

A That is correct.

Q Would you agree with me that perhaps with the exception of an FBI agent such as yourself or a law-enforcement person, a person in the general population more likely than any other, with the exception stated, to know Joanne Chesimard's face would be precisely a bank teller because a bank teller would live with that lady's picture?

MR. REILLY: Objection, speculative.

MR. THAU: I will withdraw the question.

No further questions.

MR. REILLY: Your Honor, no further questions.

THE COURT: All right, you are excused, sir.

(Witness excused.)

THE COURT: Court is adjourned. We'll resume tomorrow morning at a quarter of ten.

Can the necessary arrangements be made, Mr. Reilly, so that we can resume promptly at a quarter of ten tomorrow?

MR. REILLY: Yes, they can, your Honor.

MR. THAU: Your Honor, Mr. Reilly makes that assurance and probably without knowledge of what kind of a body of prisoners there exists at the MCC, unless he has already inquired, that is, whether there are ladies

mcs

who look like my client.

MR. REILLY: I'm prepared to go forward at 9.45 with the remaining witnesses and to deal with that problem.

THE COURT: When do you intend to deal with the requested lineup?

MR. REILLY: It is my observation -- subject to a consultation I intend not to call Miss Farrier.

MR. THAU: All right, that settles all problems.

THE COURT: 9.45, tomorrow morning.

(Trial adjourned until June 15, 1976, at 9.45 o'clock a.m.)

UNITED STATES OF AMERICA

vs. 76 Cr. 517

JAMES MELVIN GREEN and
DEBRA FENNELL GREEN.

New York, June 15, 1976;
10.20 o'clock a. m.

(Hearing resumed.)

- -

THE COURT: You may proceed, Mr. Reilly.

MR. REILLY: Your Honor, the Government calls Miss Lily Yu.

THE COURT: What about Miss Farrier, is she here today?

MR. REILLY: No, your Honor.

MR. THAU: With respect to Miss Lily Yu, I would like to make a record of something which Mrs. Green has just informed me about.

She informed me that yesterday afternoon as she and her husband, her co-defendant, were being taken out of court both of them were handcuffed and in the custody of the marshals and Mrs. Green saw an Asiatic woman in the company of one of the prior witnesses who appeared in this hearing, suggesting to us very strongly

that this Asiatic lady may well be the next witness, Lily Yu, and there is grave danger that Lily Yu has seen these defendants in cuffs rig t here outside the courtroom.

THE COURT: You can ask her any questions you want on cross-examination.

Bring in the witness. Fortunately for you Miss Yu will not be a juror. She will be a witness and since your client is sitting here in the courtroom and is the only woman meeting the particular description that I know we will have, I think that you can best protect your record by your usual vigorous cross-examination.

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L I L Y Y U , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECG EXAMINATION

BY MR. REILLY:

Q Mrs. Yu, just try to speak loudly so everybody can hear you in the room.

Where are you employed?

A I'm employed at the First National City Bank, now called Citibank, at 40 West 57th Street in New York.

Q Were you so employed there on March 5, 1976?

A Yes, I was.

Q What is your position there?

A I was teller.

Q Do you recall a bank robbery or attempted bank robbery taking place on March 5, 1976?

A Yes, there was an attempted bank robbery.

Q Do you recall the circumstances of that attempted bank robbery?

A Yes, I tried to tell what I remember.

Q Please do so?

A That was around 2 o'clock in the afternoon. I was in the window. There is nobody on line. There is two guy -- a boy and a woman, a boy and a girl came to my window and the boy tried to let the girl show me a piece of paper and it says "This is a stickup."

Then as soon as I saw that sentence I tried to pull the alarm, and then the boy said, "Don't push the alarm," but I tried to do that, but he -- maybe he saw that I tried to do that and then he said, "Let's go, she did it already."

Then they turn away. That is all there was.

Q How far away was the boy and the girl from you during this time?

A Not too far, about two feet or three feet.

Q What were the lighting conditions at the time?

A About here like this, maybe a bit brighter.

THE COURT: Maybe brighter than this coutroom is now?

THE WITNESS: Yes.

Q Were the overhead lights on in the bank?

A Yes.

Q Did the boy or the girl wear any disguise or anything to cover their faces?

A No.

Q How long a period of time passed when you first noticed them until they left; can you remember?

A Just about a couple of minutes.

Q A couple of minutes?

A Yes.

Q Did they have any conversation with you, either one of them?

A No, just the only conversation, the boy said, "Don't push the alarm," and then I tried to say I didn't, but he just say, "Let's go, she started it already."

Q Was there any obstruction between you and the boy and the girl during this two-minute period.

A No, no obstruction.

Q Were you looking at them when you were speaking

to them?

A Well, I was looking at that piece of paper and then I didn't look at their face. I mean, I didn't look at them very deeply. I just looked --

Q After you looked at the piece of paper, did you look up at them when you talked to the man?

A I don't think that I did look at them.

Q How long a period of time, if you can recall, were you actually looking at the girl and the boy?

A A couple of seconds.

Q Do you have any recollection of what they looked like now?

A Nothing particular.

Q Did there come a time after the bank robbery on a different day where an FBI agent showed you some pictures?

A Yes. I beg pardon?

Q Did an FBI agent come to the bank on a day after the bank robbery?

A Yes.

Q Did he show you a group of photographs?

A Ye.

Q Did he show you a group of males?

A Yes, first a male and then, second, the female.

Q Were you able to select either the male or the female that robbed you that day?

A The FBI man showed me the picture and maybe I misunderstand that I have to pick up the most like. I did pick up two of them, one of each on that date, but that is the most like pictures among those pictures that I can pick up.

Q What do you mean, it was like the person?

A Yes, but not -- I can't say -- it is not 100 percent I'm sure, but I said it is most alike.

Q Did the FBI agent also show you a photograph from the bank surveillance camera?

A After that he did.

Q After --

A After the groups of pictures, different date.

Q On a different date?

A Yes.

Q When he showed you that picture, what if anything did he say that you can recall?

A He didn't say anything, but I just realized that what all in mind is different. I imagine when I first met them I thought that they looked much younger, they looked much thinner, but actually in the pictures -- in the pictures was a little bit different.

Q I am going to show you what is marked H-18 for identification, already marked, I believe, and I will ask you:

Is this the picture that they showed you?

A Yes, I recognized the background of the bank.

33 Q Did he ask you to sign the picture on the back side?

A Yes, he asked me to sign with my name in the back.

Q Is that your signature, Lily Yu?

A Yes.

Q Is this your handwriting or is that the text of the statement or is it the FBI agent's?

A That is not my handwriting.

Q Did you read the statement after he wrote it?

A I am afraid not.

Q You did not read it?

A No.

Q Did he recite it to you?

A I don't remember.

Q Would you read the statement now?

THE COURT: To yourself.

Q To yourself.

A I don't have to read it now aloud?

Q No, just read it to yourself.

THE COURT: To yourself.

A Yes.

Q Having read that statement, is that a correct statement of what you told the FBI agent at the time he showed you this photograph?

A Yes.

MR. REILLY: The photograph is in the record. If I might just read this short statement into the record --

THE COURT: You may.

MR. REILLY: "The black male and female on the reverse side of this photograph on the right-hand side are the individuals who tried to rob me at my teller station by present a note on March 5, 1976."

Signed Lily Yu, dated 3/19/76.

Q I am going to ask you, Miss Yu, when he presented that photograph to you did that photograph refresh your recollection as to the individuals who attempted to rob you on March 5?

A I'm sorry. I didn't get it.

Q Did that photograph refresh your recollection or remind you of the individuals who robbed you or attempted to rob you on March 5?

A That is what I was -- I just told, I said on

March 5 at that moment in my mind they are a little bit -- I mean, like I told the FBI, they have a short jacket, but actually in the picture they have a long jacket. That is why I said I have a totally wrong memory.

Q Concentrating on the facial features, does that photograph remind you of the individuals or not?

A Well, the face of these pictures, yes, becasue I'm looking at the pictures.

Q You are saying, you are telling me, if I'm right, that the reason you recognize them as bank robbers is because they are photographed there?

A Yes.

Q If those two individuals were photographed in some other location you wouldn't recognize them as bank robbers; are you saying that?

A Yes.

MR. REILLY: Under those circumstances the Government does not intend to have Miss Yu identify the two defendants at trial. However, we will call here as a witness concerning the circumstances of the bank robbery.

THE COURT: Very well.

In view of the concession by the Government,

do either of you believe that cross-examination would be either appropriate or useful in this context, since this is an identification hearing and she is not going to be proffered as an identification witness?

MR. THAU: I would have a little cross-examination, your Honor, on the subject of whether the spread that was shown to Mrs. Yu the same day as the surveillance shot -- perhaps there is no need for that. Mr. Reilly concedes that the statement written by and signed by Mrs. Yu on the back of G-18 is dated March 19 and that according to the 3500 material that is also the same day the spread was shown.

MR. REILLY: Your Honor, I see no need to stipulate to that in the context of this hearing. She is not going to make an identification and Mr. Thau, if he wants to cross-examine, can and get a stipulation during the trial. That is something else.

THE COURT: I think that would be appropriate for cross-examination. The Government has represented that they did not intend to have this witness identify your client. Therefore, the purpose for which the hearing is being held now has been fulfilled because they have conceded that she is unable to identify with or without a photo spread and thus it becomes only a matter of her credibility

on the merits of her testimony, and I think that is probably covered at the trial on cross-examination.

MR. THAU: The only reason I took that up is that there suffuses this hearing or the suggestion or the suspicion in my mind that the practice adopted by the FBI agents in this case is to show tellers a surveillance shot where there is a likelihood that those tellers will recognize whoever the robbers were and at the same time or shortly thereafter submit to them photo spreads.

THE COURT: This may be a perfectly proper thing where the witness is being proffered as an identifying witness, and I would suggest it is proper on cross-examination at the trial.

THE COURT: I certainly will not preclude you because that goes to the witness' credibility and I would permit cross-examination on that. I do not think pre-trial cross-examination is appropriate in the context of the trial. You have that right.

Mr. Mitchell.

MR. MITCHELL: I have no questions.

MR. REILLY: Would you ask the witness or direct the witness to return tomorrow at 10 a.m. if we are going to start at 10 a.m.?

THE COURT: Yes.

Would you do that, Miss Yu? I know you were here yesterday, but I would instruct you at this time to return to continue in connection with your participation in this case tomorrow, that is, Wednesday at 10 a.m. You will report in tomorrow at 10. I would appreciate it. Please come to the same place.

MR. THAU: Do I understand the Government's position to be that not only will they not elicit an in-court identification from Miss Yu, but that in addition they will not offer H-18?

THE COURT: Oh, no. That surveillance photograph is presented as having been made at the time and I think it is perfectly proper for the trial. Let's hear from the Government on this.

MR. REILLY: Your Honor, rather than faulty memory we have a document of the actual robbery or attempted robbery itself.

THE COURT: Certainly.

H-18 shows two people peacefully walking in the bank and the jury can draw the inference necessary if the authenticity is shown and the Court will find relevant and admit the exhibit. If the jury believes, as they may, from circumstantial evidence rather than direct evidence that the defendants were in that bank and were

there for the purpose of robbing it, then they will return the appropriate verdict. If they do not you will have every opportunity to argue that they were in the bank for a peaceful purpose such as coming to make a deposit in their bank or coming to make a withdrawal, then the jury may find otherwise.

MR. THAU: All right. Of course, your Honor, we will need a good deal of technical testimony with respect to when the camera was triggered. We will expect every frame of this film.

THE COURT: I trust you have seen it already.

MR. THAU: I haven't.

THE COURT: You should have in your pretrial preparation. This hearing is not for that purpose, sir. You asked for all photos of your client and those were directed to be furnished to you.

Mr. Reilly, has that been done?

MR. REILLY: We have provided counsel with photographs of the defendants in the bank.

THE COURT: All photographs of the defendants in the bank have been shown.

MR. THAU: Films were taken, films which have countless frames. Certainly we haven't even photos of every frame.

MR. REILLY: Those that were developed, your Honor, we have. That is the procedure, which has been explained already. The FBI takes a lock and picks --

THE COURT: If the defendants want to subpoena the bank to put in other evidence of other frames which may be helpful to their case they have a right to subpoena the bank.

Is there anything further with Miss Yu?

Thank you, Miss Yu.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Please call your next witness.

MR. REILLY: FBI Agent Paul F. Cavanagh.

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P A U L F. C A V A N A G H , called as a witness byt he Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Are you a special agent of the FBI?

A Yes, I am.

Q Are you assigned to the Bank Robbery Squad?

A Yes, I am now in New York.

Q Directing your attention to April 2, 1976, did you go to the National Bank of North America to interview one Donna Morrison?

A Yes, I did.

Q At the time, did you bring with you a spread or several spreads of photographs?

A Yes, at that time I brought two separate spreads of photographs.

THE COURT: What date was that?

THE WITNESS: April 2, sir.

Q Did those spreads of photographs include pictures of the defendant James Green and the defendant Debra Green?

A Yes, sir.

Q Do you have those two spreads with you?

A Yes, I have them here.

MR. REILLY: I am going to ask that these be marked H-19 and H-20 for identification.

H-19 is a spread of five photographs of females.

H-20 is a spread of six photographs of males.

THE WITNESS: Both of them contain six.

THE COURT: Both of them contain six.

(Government's Exhibits H-19 and H-20 were received in evidence.)

Q Would you explain the circumstances concerning your showing of these spreads of photographs to Miss Morrison?

A Miss Morrison was a victim teller while working at the bank in midtown. After the robbery there had been an arrest made of two individuals. I indicate the two defendants here. They were photographed in our office and because of the similarities in both the robbery that was assigned to myself and the robbery for which the defendants were arrested, I brought them -- made up a spread of photographs containing six males and six females, intervieed Miss Morrison and showed her at that time the spreads, asked her if she could pick in those spreads the individuals that robbed her on that certain date.

Q How did you show these spreads to Miss Morrison?

A I mixed up the photos which did contain both defendants' pictures, handed her the spread, first the male spread, and she looked through them. She stopped, selected Mr. Green's photo after looking at all six. She picked his picture out. She did the same thing with Mrs. Green, looked at all six and picked her photo out.

Q Do I understand your testimony to be that you actually handed her the package of photographs with the photographs all together, one behind the other?

A Correct.

Q Do you have any recollection of whether the photograph of James Green appeared on the top of the pile?

A Neither defendant would appear on the top. Some were in the middle, three or four.

Q With respect to the male, did Miss Morrison make a selection of the person who she thought -- did she make a selection?

A What, if anything, do you recall her saying?

A She said, "This is the individual who robbed me at my teller's station."

Q How much time passed before she said that?

A A couple of seconds.

Q With respect to the female, how much time passed?

A A similar amount of time, very, very quick.

Q Do you recall what she said?

A She said, "This is the female."

Q Just to make sure, is H-19 the female spread?

A Yes. I had Miss Morrison initial and date each picture and sign and date the picture, who she indicated to me was the female who robbed her bank.

Q Is that picture No. 2, the picture of Debra Green?

A Yes, right. She initialed and dated the other ones for evidentiary purposes. She indicated to me also at the time of selection that she chose Green despite the fact that she was wearing a head covering, because she said during the robbery she did not have a head covering on herself at that time.

Q Did she use the term "despite the fact"? What was the context?

A She said this was her but she didn't have this kerchief on, I believe she called it.

Q I show you H-20 and ask You whether that is the spread of males that you showed?

A Yes. Yes, this is the spread that I showed to her of the male individuals.

34 THE COURT: How did you present that spread to her?

THE WITNESS: He had been the third picture. I numbered these pictures.

THE COURT: In other words, they were like cards in a deck and he was the third in a group of six?

THE WITNESS: That is correct. I placed them in front of her, told her to carefully look at them and if she did indeed see the individual, to put him aside.

THE COURT: What happened?

THE WITNESS: She looked through these pictures, stopped at his, put it aside and told me this was the man -- after going through the rest of the pictures, this was the man who robbed her that day.

I then asked her to sign the back and date it and initial and date the back of the other pictures.

Q Do you have any bank surveillance photography available in connection with this particular bank robbery?

A No, unfortunately there was no pictures developed from that bank robbery, nor surveillance photos available to me.

Q Do you have any bank surveillance photography

from any other bank robberies that the Greens were believed to have been involved in?

A No.

Q It is my understanding that you did not show her any other photographs.

A No, these were the only pictures showed to Miss Morrison on that date, April 2nd, no other photographs.

MR. REILLY: Thank you. No other questions.

CROSS EXAMINATION

BY MR. MITCHELL:

Q On this H-20 spread, which were the pictures you gave to Miss Morrison, did you know the weight and height of any of these people?

A No.

Q In a spread aren't you supposed to have a person who is the approximate weight and height so that the facial features --

A A camera would distort that entirely. It is a matter of measuring the length of a skull. They can do that, but actually on a lineup, yes, a lineup, that would be very much the preference, but individual head size has nothing to do with their body size.

Q You based the photographs on something that was

supposed to be similar to the defendant, I mean, or were you picking pictures that were dissimilar?

A You pick pictures that could be similar. I have no idea --

Q You picked five pictures here?

A That is right.

Q What was the basis of selecting these five?

A Five black males.

Q Do you know that these black males had previously been selected by other agents to show --

A No.

Q You didn't know that?

A No.

Q Where did you get them?

A In photographs that I keep for this pupose.

Q You just pulled them out?

A Yes.

Q Was your file an exclusive file or --

A No, a mutual file that we use to select photographs. I made sure that there were no white individuals there.

Q How about the hair, were you concerned with that?

A Unless it was totally different as far as a

huge Afro or a Mogegan haircut.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Agent, you went to Miss Morrison to show her H-19, the women's spread, several weeks after the actual robbery; is that right?

A No, I don't believe so. You have to refresh me. The date of the robbery -- the day I was down there was 4/2/76.

Q The robbery was 3/8?

A It would be one month, probably.

Q Yes.

A Yes, approximately a month, yes.

Q Prior to April 2 had you ever shown Miss Morrison a photo spread of women suspects?

A No, I had never met Miss Morrison until that morning. I introduced myself to her on April 2 and showed her that spread.

Q Is it the practice of an FBI agent to not show victim tellers photo spreads until such time as the FBI has taken into custody someone whom the FBI suspects of being involved in the robbery; do you understand my question?

A Yes, I understand your question. It would all depend on the case. Every case is very much different. If you haven't developed a suspect, it is one thing. If you feel certain people have perpetrated this crime, it is up to the discretion of the investigator at that time.

Q Your files have numerous photos of suspected bank robbers and people who in fact have a history of bank robbery; is that right?

A Among others, yes.

Q And doesn't the FBI, based on the description given it by a victim teller put together a photo spread as soon as after the crime as is possible and submit it to the victim teller before someone is actually apprehended on suspicion of that crime?

A No, not necessarily, no.

Q That is not the practice?

A There is no set practice.

Q By the way, this No. 3 in the spread, will you agree with me that one would be hard put to tell whether this individual is a man or a woman?

A No I don't know.

Q You don't know, is that it?

A I have no trouble. You might have trouble

or someone else. I had no trouble.

Q Do you recognize this individual right off-hand as a woman without any doubt; is that right?

A I believe she is a woman.

Q You believe it?

A Yes.

Q As to this person, it is not a matter of belief -- that is, the person depicted on 5 -- she is obviously a woman; is that right?

A Or a man in drag. She looks like a woman.

Q Perhaps you have more experience with these matters than I have, Agent.

Now, on April 2, when you caused Miss Morrison to view H-19, did you have her right anything on the back of the picture she selected?

A It is the practice -- I have her initial them to keep the spread together for evidentiary purposes and date it and the picture she believed and told me was the individual female who was in the bank with the other male she had previously selected. She wrote her name on and dated it also.

Q Do you recall whether she viewed the males first or the females first?

A The males.

35 Q And did she initial or sign, rather, her name on the male's photo before she got to look at the female spread?

A I don't recall, to tell you the truth, right now.

Q Is it your practice when a witness makes an identification out of a photo spread to have that witness sign his or her name on the back of that picture as soon as possible?

A Yes, it would be, but they usually identify one person at a time. Multiple jobs would be different.

Q Do I take it that the names of the persons depicted on these photos were on the back of these photos when you showed the photos to Miss Morrison?

MR. REILLY: I object, your Honor. This really has no relationship whatsoever. He has already testified that he showed it to her face up and not the reverse side. Apparently Mr. Thau is trying to develop a record with respect to other witnesses who testified.

MR. THAU: I'm not at all, your Honor. The witness' signature doesn't appear on the front. It appears on the back.

THE COURT: Overruled.

Do you want to hear the question again?

Read it, Mr. Reporter.

(Question rad.)

A Yes, they were.

Q So that Miss Morrison, who reviewed the males first, signed her name to a photo labeled James Melvin Green, is that correct, and I show you No. 3 out of H-20?

A She did.

THE COURT: Did she see the back of the photograph before she picked out --

THE WITNESS: No, no, the only thing she looked at is the face and selected it.

THE COURT: She looked at the face.

When she made the selection you had her sign on the back?

THE WITNESS: Yes.

THE COURT: You may proceed.

Q The name James Melvin Green appeared right there over her signature?

A Right.

Q Did you make any comments to her to the effect that the person whose photo she had picked had recently been arrested?

A No, not at that time, no.

THE COURT: Did you make that comment to her at some other time?

THE WITNESS: I believe after the display was done I advised her that two individuals had been arrested. I also advised her of the name of the individuals that she selected, which we are required to do, "You have chosen so-and-so," so she could recall it, and that was the end of it.

THE COURT: Did you give her the names, first of the man, before she identified his picture and, second, of the woman before she identified her picture?

THE WITNESS: No, no, you just show the picture, not until everything was all done, and signed that I mentioned that she had selected the two individuals, and I gave her the name. This is prior to what she selected, I took the signed statement.

Q I show you H-19, the six photos depicting women. Would you agree with me that in terms of the freshness of the print and the age that you can infer from these photos because of the freshness that photo No. 2, which is the photo of Debra Green, is obviously and patently the fresher, the print is glossier, it is brighter and not as scuffed or aged by time and the elements?

MR. REILLY: I object to the form of the question.

THE COURT: The Court is now observint the prints and I just would pick up for example, the print of Miss Green and the print with the No. 3. I find them equally glossy. I don't find, for example, any of them to be dog-eared, bent, dirty, or discolored on their face.

MR. THAU: It is interesting that the print your Honor picked --

THE COURT: You don't have to say something. Just ask your questions.

MR. THAU: The print your Honor picked together with the defendants happens to be that of the person who to me looks like very much like a man or the man in drag or a woman in drag. I forget how the agent put it.

THE COURT: I must tell you that is hard to say, one way or the other.

MR. THAU: Thank you. That is right.

Q Agent, did you show these photos of women to anyone else in the bank?

A No.

MR. THAU: Thank you very much.

REDIRECT EXAMINATION

BY MR. REILLY:

Q You indicated that you took a statement or two statements from Miss Morrison. Do you have those statements with you?

A Yes, I do.

MR. REILLY: I would like to have those marked and received in evidence, your Honor.

THE COURT: Very well.

Have they been furnished to the defendants?

MR. REILLY: Yes, your Honor, copies of 23 and 24.

We will make these Hearing Exhibit 21, which is the statement of Donna Morrison with respect to the females and, 22, which is the statement of Donna Morrison with respect to the males and we have no further questions beyond that.

THE COURT: Anything further of Mr. Cavanagh?

MR. THAU: No.

THE COURT: You are excused, sir.

(Witness excused.)

MR. REILLY: Donna Morris.

I offer 21 and 22 in evidence for the purpose of this hearing only.

THE COURT: Any objection?

MR. THAU: No, your Honor.

MR. MITCHELL: No, your Honor.

THE COURT: Received.

(Government's Exhibits H-21 and H-22 were received in evidence.)

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D O N N A R A E M O R R I S O N , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Miss Morrison, would you try to keep your voice up so we can hear you in the back?

A Yes.

Q Where are you employed now?

A Bankers Trust.

Q On March 8, 1976 were you employed by a different bank?

A Yes.

Q Which bank was that?

A The National Bank of North America.

Q What branch did you work at at that time?

A Branch --

Q Not the number, please. Just the address.

A 515 Seventh Avenue.

Q What cross street is that?

A 38th Street.

Q What was your position?

A Teller No. 14.

36 Q On March 18, 1976 do you recall being the victim of a holdup?

A Yes.

Q How was the lighting condition that day in the bank?

A It was bright.

Q Clear or dark?

A Clear.

Q Did there come a time when somebody came to your station in connection with that bank robbery?

A Yes.

Q Tell us what happened?

A I had just come back from lunch and I called some people over from other lines because nobody had come to my line yet, and two people, a black female and black male, came up. They showed a gun and a note and --

MR. THAU: Objection to "they."

Q Who showed the gun, if you know?

A That black gentleman.

Q The male who appeared before you, in any event, is that right?

A Yes.

Q And your recollection is that someoneone showed a note?

A Yes.

Q Do you remember who did that?

A The woman.

Q What happened then?

A I started to reach my alarm, but I didn't. I was too nervous and I gave them the money and they left.

Q Did you have any conversation at all with either one of the two people that held you up?

A Yes. The man said, when I started to reach "Don't do anything, just give us the money."

Q How far away was the man and the female from you?

A About two feet, across the counter.

Q Was there any obstruction between you and them?

A Yes.

Q Was there any visual obstruction then?

A No.

Q Were they wearing any concealing garments over their faces?

A No.

THE COURT: No masks or anything like that?

THE WITNESS: No.

Q How long a period of time did you have them under observation?

MR. THAU: May we take them individually?

THE COURT: Yes.

Q Were they standing together?

A Yes.

THE COURT: Who did you see first?

THE WITNESS: The man.

THE COURT: Take him first.

About how long from beginning to end did you have him under observation?

THE WITNESS: Less than two minutes, a little more than a minute.

THE COURT: Now the woman.

THE WITNESS: The same amount of time.

Q How far away was the man from the woman?

A They were close together, their shoulders were touching.

Q When they left did you get a view of them as they left?

A No.

Q Were you interviewed by the FBI that day?

A Yes.

Q Did you provide them with a description of what these two individuals looked like?

A Yes.

Q Did you have a good recollection of them at that time?

A Yes.

Q Did the FBI subsequently come to you at the bank with some photographs?

A Yes.

Q Do you recall the agent who came; do you know his name?

A No.

Q Was he the individual who just testified here?

A Yes.

Q Does the name Cavanagh mean anything to you; yes or no? It may not.

A Not really. I remember seeing him.

Q Tell us how he went about showing you these photographs. First of all, where did he show you the

photographs?

A Up on the second floor in a private room for conferences.

Q Was there anyone else besides you and the FBI agent?

A The assistant manager.

Q Had the assistant manager seen either one of the holdup people?

A No.

Q What did the FBI agent do after you got to the conference room?

A He told me what he was going to show me and he laid out first a collection of pictures of men and then the female.

Q Did he ask you to select anyone from the collection of men?

A Yes.

Q Do you recall how long it took you to make that selection?

A Less than a minute.

Q And after you made that selection, did you put your signature on the back side of the picture that you selected?

A Yes.

Q With respect to the females, did he likewise give these photographs to you?

A Yes.

Q What did you do with the photographs?

A I also signed them, the one I picked.

Q You did select a photograph?

A Yes.

Q Do you recall how long it took you to select the photograph of the female?

A Less than a minute.

Q I'm showing you H-20 in evidence and lay these photographs out. Tell me whether you have seen these photographs before?

A Yes, I have.

Q What are they?

A The selection of photographs that the FBI agent showed me.

Q Do you recall which photograph you selected?

A Yes (indicating).

Q Indicating the picture of James Melvin Green, No. 3 instantly.

Have you seen these photographs at all between the time the FBI agent came to visit you at the bank and this very moment?

A No.

Q I show you six photographs which form a part of H-19 and ask you whether you recognize that group of photographs, first of all?

A Yes.

Q Were these the photographs that were shown to you by the FBI agent in respect to the females?

A Yes.

Q Did you make a selection?

A Yes (indicating).

Q You are now pointing instantly to the picture of the defendant Debra Fennell Green, No. 2.

Have you seen these photographs between the time the FBI agent showed them to you at the bank and this very moment?

A No.

Q Now, directing your attention back to the time of the bank robbery, were there any distinctive characteristics of the male that you remembered from that occasion?

A I just remembered, really, what he was wearing and the shape of his face. That was about it.

Q What was the shape of his face that you recall?

A He was small, a very thin face.

Q With respect to the female, do you remember any distinctive features?

A She had braids, longer hair then.

Q Were there any distinctive facial features that you recall?

A She had large features and she wore a lot of makeup and big earrings.

MR. REILLY: Thank you.

Your Honor, I have no further questions.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Just in regard to the male for the moment, did you notice that there was a tooth missing?

A No.

Q Was there any sort of a lisp in the voice due to the missing tooth?

A I didn't notice any.

Q You didn't notice any?

When you said that the male was -- about how tall?

A About five feet eight.

Q Would you say this defendant is five feet eight?

MR. REILLY: Indicating "Yes" with a nod.

A Yes.

THE COURT: She was shaking her head.

THE WITNESS: Yes.

37 Q Tell me, when you were given H-20, which was the male spread, were they spread out for you to look at? What happened?

THE COURT: Just tell us how it was given to you.

Q I'm the agent. What did I do?

THE COURT: What did he do?

A He spread them all out and just --

Q Just spread them all out like this (indicating)?

A Yes. No, they were more like that (indicating).

Q Spread out like that?

A Yes.

Q And then he asked you to select them?

A Yes.

Q Tell me this, did you at any time get them in this group like this, take them in your hand and look at them one at a time?

A No.

Q You are sure of that?

A Yes.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Miss Morrison, were these pictures ever placed face down as you were looking at them?

A No.

Q When they were handed to you were they handed face up or face down?

THE WITNESS: Face up.

THE COURT: Did there come a time when you saw the back of any of them?

THE WITNESS: Just when I signed them.

THE COURT: That was the first time?

THE WITNESS: Yes.

THE COURT: And was the same procedure followed with the photographs of the female?

THE WITNESS: Yes.

Q Do I understand that you saw the male first in the bank?

A Yes.

Q And you beckoned him from another line?

A Yes.

Q He was waiting on line?

A Yes.

Q At another teller's station?

A Yes.

Q Was he then accompanied by the female?

A Yes.

Q Was it then that you saw a gun?

A No, when he came up to my window.

Q I'm sorry?

A When he came up to my window.

Q You saw him before you saw her; is that correct?

A Yes.

Q Was your attention riveted on the gun that the male pulled?

A Yes.

Q Were you scared?

A Yes.

Q Understandably.

And he's the one who spoke to you?

A Yes.

Q And were you looking at him as he spoke to you?

A I was looking at him. I wasn't really seeing anything. I was just too scared.

Q And it was to the male that you gave the money?

A Yes.

Q So that at that time you were at least looking in his direction also; is that right?

A Yes.

Q It is after you gave the male the money that these two visotors just left your station; is that right?

A Yes.

Q Would it be fair to say that you looked longer and harder at the male than you ever did at the female on that occasion?

A He was harder to describe. I would have had a tougher time telling the police what he looked like if I didn't look at him longer.

Q I'm not faulting you for it. I'm asking you whether you did not look at him considerably longer at the time he had the gun, and to whom you spoke and to whom you gave the money?

A I think I looked at them both the same amount of time.

Q When you were shown Exhibit H-19, which is the female photo spread, the picture that you identified was the only woman in the entire spread who had a hair covering; is that right?

A Yes.

Q And as to the other ones, they are all bare-

headed; is that correct?

A Yes.

Q And none of them have braids such as you described the woman to have had at the time of the robbery; is that right?

MR. REILLY: Indicating yes.

THE COURT: Indicating yes.

A Yes.

Q So that unless these other females than the one you picked in the spread had new hairdos, you knew that one of those wore braids; is that right?

A It could have been a wig.

Q I ask you to look at photo 3 in H-19. If you weren't told that this depicts a woman, would you have said for certain that this was a woman?

A No.

Q You would not. Just as likely a man than a woman; is that right?

A Yes.

Q How about in terms of age, how old would you say the individual depicted on the picture, picture No. 3, strikes you?

A Early 20's.

Q You described the female assailant, did you

not, as having black hair?

A Yes.

Q I now show you photo No. 5, this spread, and H-19.

Now, this is a black and white photo, of course, but what color hair would you say this woman appears to have, the one on photo 5?

MR. REILLY: I object, your Honor.

THE COURT: It is pretty hard to tell from a black and white photograph. I recognize the shading is lighter, but if you want the witness to answer the question I'll let him.

MR. THAU: I think women are very, very threatened in that area, your Honor.

THE COURT: I will permit the answer, if she can.

Q Does it look like black hair to you?

A No.

Q In fact, blond hair?

A It looks like a wig.

Q What is the color of the wig, if it is a wig?

A A reddish blond.

Q Reddish blond?

A Yes.

Q Do you know if anyone else at your bank was shown these photo spreads when you we

A The assistant manager just sat across the table from her, but she had not seen the robbers.

A Some time shortly after the robbery, when you were interviewed by the FBI, did the FBI have you make a composite picture of the two assailants?

A I don't understand.

Q You don't know what that is?

Are you familiar with a device used by policemen and FBI where they have plastic over which they have different types of noses?

A No, I didn't know that.

Q Do you know what I'm talking about now?

A Yes.

THE COURT: You have seen on television they put a face together with different parts?

THE WITNESS: Yes.

THE COURT: But that was not done with you?

THE WITNESS: No.

Q You told us that you were too scared to operate the alarm; is that right?

A I was going to but he told me not to, so I -- I didn't follow through with it.

Q How about when the two persons turned around and left. At that point did you activate the alarm?

A I thought I did, but I didn't do it right.

Q Do you know whether, aside from an alarm activated by you, there is in your bank or was then in your bank a camera that takes photos whether anything is happening in the bank or not?

A You have to pull the alarm for it to start going.

Q I'm talking about a different kind of a camera.

Are you familiar with some cameras which take photos every 17 or 18 seconds whether anything is happening or not?

A Not in that bank.

Q You are not familiar with that?

A No.

Q You know it exists in some banks but not at that bank?

A No.

MR. REILLY: Objection.

THE COURT: She has answered the question and I think it is clear from the answer, whether it is installed in certain banks, that it was not to this witness' knowledge installed in the National Bank of North America.

MR. THAU: Thank you.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did you receive any training prior to yor becoming a teller at the National Bank of North America?

A Yes.

Q As part of that training did they give you instruction on how to respond during a bank robbery or attempted bank robbery?

A Yes.

Q What instruction do they give you?

A Don't get too nervous and try to pull the alarm as fast as you can or else, if you can't pull the alarm, try to get another teller's attention.

Q Is there any instruction given with respect to the identify of the bank robbers?

A Try to get a real good look at him so as really to identify him just from your memory.

Q Have you ever been held up prior t this time?

A No.

Q When you were the victim of this holdup, did you remember that particular piece of instruction?

A Yes.

MR. MITCHELL: I object to that, your Honor, too far afield.

THE COURT: It has been answered. I'll let it stand.

MR. REILLY: All right, your Honor, fine.

MR. THAU: Nothing further.

THE COURT: You may step down.

Miss Morrison, I would direct that you return to give testimony tomorrow at 2 o'clock.

THE WITNESS: All right.

THE COURT: Thank you.

(Witness excused.)

MR. MITCHELL: May we have a short recess?

THE COURT: Let me just make one inquiry of Mr. Reilly and then we will.

MR. REILLY: We have no further witnesses with respect to the photo identification. We did have Mr. Vogt who testified with respect to the presentation of photographs to Gail Ferrier. She is not here today. I think the record is sufficient and complete with respect to how that spread of photographs was shown concerning the male and further that if your Honor feels that the record is not sufficient, I make a request that with respect to that one identification we be allowed to take

her outside the presence of the jury when she comes to testify.

THE COURT: That will be satisfactory.

As I understand it, the Government has now finished its presentation of evidence in connection with the photo identification.

Do the defendants wish to present any evidence beyond what has been adduced already on cross-examination with regard to this matter?

MR. MITCHELL: No, your Honor.

MR. THAU: No.

THE COURT: Very well, we will take a short recess at this time.

(Recess.)

MR. MITCHELL: Your Honor, weith regard to the testimony of the various identifying witnesses, I'll make a general statement because your Honor has heard the testimony of each one. I feel that in each instance the spread which was shown to the witnesses was not a fair spread, as called to your Honor's attention, by the fact that in certain instances the hair was much longer and the complexion and so on and so forth. I feel that under the cases this type of identification was not a fair one as far as the defendant James Green was concerned.

MR. THAU: In behalf of Debra Green, I would join Mr. Mitchell's statement and add a few things, if I might.

Your Honor, the first witness who we heard were from the First National City Bank and that would be as to Counts 1 and 2, and --

MR. REILLY: Manufacturers Trust.

MR. THAU: Manufacturers, thank you.

And as I recall it, I was surprised and quite chagrined that Agent Roach chose to show these bank officials a surveillance photo, one of two surveillance photos, in one of which the right profile and part of the full face of the woman are very visible.

If it is one's contention that this woman on this picture, which would be H-8, is my client, then it is inevitable that when shown a spread of photos in which one of the pictures is concededly that of Mrs. Green, who is the teller to pick except the person who is depicted on the surveillance shots? This is about as shabby and unfair a photo spread as I could possibly think of. It makes no sense whatever. Apparently Mr. Roach had no confidence that the teller could identify or pick out a female out of the photo spread, so to make sure that the teller picked out the person whom Roach wanted

her to pick out, he shows her the surveillance shot. I think that is reprehensible and it certainly smacks of unfairness and is unfairness by definition.

Should your Honor be inclined to permit Miss Churilla, who was the teller here, to make an in-court identification, I certainly would ask that Miss Rivera not be permitted to do so.

If you recall, I took Miss Rivera through a bit of choreography concerning where she sat, how low she sat, how high the counter was, and it is my judgment that from that vantage point she couldn't possibly observe the face of anyone on the other side of the counter and she said in no uncertain terms that by the time she stood up, Miss Rivera stood up, the two visitors to Miss Churilla's window had already turned around and she certainly did not see their faces at that time.

I would further add that none of these three witnesses from the Manufacturers Hanover Bank, as I recall it, identified my client here in court. Mr. Reilly never asked:

Do you see here the female who was at the bank on the given day? In response to which t he witness might have said or might not have said, "Yes."

THE COURT: You could have asked the question

also.

MR. THAU: As your Honor knows, counsel abstains from asking questions which might not do him much good. It is not my duty to elicit perhaps incriminating evidence against my client.

Just as if we were on trial and Mr. Reilly somehow forgot or deliberately omitted or abstained from asking such a question, certainly you cannot tell me at the end of the case when I tell you my client has never been identified as the one who committed the crime, I don't think it would be very indicative to say "Well, you could have asked it too." I think it would have been malpractice for me to ask it at trial if it hasn't been shown prima facie that the defendant is the one who is involved.

THE COURT: I think you misstate the testimony to a limited extent. My own recollection of the testimony of Celinda Rivera was that she was not shown the surveillance photographs until after she was shown the photo spreads. I recognize that that is not consistent with the testimony of Agent Roach, who I recall having said he first showed the photographs of the mail and your co-defendant was identified, so there is no problem about his identification. But then he came back on a second

visit and it was at that time that he showed the female spread and then he testified that he showed the surveillance photos depicting, among others, your client prior showing the seven female photos. So what I have before me is a conflict between the testimony of the agent and the testimony of Celinda Rivera that it was only after the showing of the photos that she saw the surveillance photographs.

MR. KELLY: May I just add for the purpose of summarizing the evidence only that, first of all, Mr. Roach indicated that it was his general practice to show it first; that he had no specific recollection whether he did at that time or not, but he supposed that that is the way it happened.

Secondly, Miss Churilla was quite certain that she only got a fleeting glance at the top photo of the various surveillance photos that were available and that she then looked at them in toto at the selection from the spread.

Miss Rivera was quite certain that she was not even shown any of the surveillance photographs until after. My suggestion here is that the apparent conflict really is not unusual. The agent is showing surveillance photos and spreads on a routine and daily basis and he

probably does not have a specific recollection as these two bank employees who are hardly ever shown such photographs.

MR. THAU: There is nothing particularly remarkable or novel or exciting about being shown photos by FBI agents. If this is a man who practically year in and year out shows surveillance photos first and then spreads, it is likely that he did it that way and though I do not charge these tellers with perjury or knowing falsehood in the area of whether they saw the surveillance shots first or last, it is unlikely that they would remember such an order so very specifically, and here we have a man who does it religiously invariably in the manner he told us he does it.

THE COURT: I have your point relative to the Manufacturers Hanover.

MR. THAU: Very good.

As to Count 3, I understand that Lily Yu will not be called to identify my client, so I will have no further --

THE COURT: That is my understanding.

MR. THAU: So I have no argument on that.

I would once again urge as to all the other witnesses that at no time were they asked if they saw in

court the woman who was at their bank and that alone vitiates any in-court identification, because the Court has had no opportunity to see whether they had sufficient opportunity to in fact pick these people out. That is the purpose of this hearing.

Now, with respect to another of these spreads, your Honor, I pointed out during my examination that, for instance, in spread H-19 there is a woman here who has blond hair and as the witness said blond reddish, perhaps hardly consistent with the way she described the female assailant. That is not a very fair photo. In the very same spread is another woman on photo No. 3 whom at least two witnesses agreed might just as well be a man as a woman, and I ask the Court to once again look at this photo and make a finding of fact whether one can assert that this is a woman depicted in this photo.

THE COURT: Since it could have been either one, I don't see your point. I recognize that it is a black person with a short Afro and I suggest that absent a mustache or a beard I have difficulty, as I'm sure everyone does if I were to look from shoulders up, absent any observation of other portions of the anatomy to determine whether an individual wearing long hair, and that includes whites as well as blacks -- but here we are

dealing with blacks -- [illegible] a male or a female and under the circumstances I don't find anything impermissible about showing someone who by their hair style and facial appearance could pass for a man or a woman.

MR. THAU: I would say that all the women's photographs shown to these bank witnesses, of all of them only my client has a head covering. So that if the hairdos of all the other women do not match the hairdos as described by these bank officials contemporaneously and it is suggested to them that under that head covering of my client may well lurk a hairdo precisely as they described it, that is suggestive.

I have another thing, and that is that there is --

THE COURT: I think the contrary is true. It would appear at the time or at least two of these occurrences that the person now identified as the defendant Debra Fennell Green was wearing hair described as neck length and described as having been braided. It would appear that she chose to shorten her hair drastically between the time of her being observed by the bank tellers and the time of her being arrested and photographed in the nature of taking on a disguise, and it does seem to me to have been reasonable for the photograph to be taken

with a head covering.

I might have preferred if all the women in the photographs had head coverings, but I do not find this fact to be so impermissibly suggestive as to vitiate the fairness of the photo spreads.

MR. THAU: One last objection to the spread;

In H-17, as I brought out in my examination, there is a photo of one Joanne Chesimard, a lady of some notariety.

THE COURT: But not to any of these tellers.

MR. THAU: I represent to the Court, since I visit banks occasionally, that in these past years there has been on display in just about every bank I have gone to in New York City a composite made up of perhaps 20 pictures of people wanted for bank robbery, and it is -- I cannot say for certain, but it is my recollection that the very picture that was employed in this spread is the one employed in that composite that calls for the apprehension of Joanne Chesimard.

MR. REILLY: Can I say that H-17 relates to the Citibank job, which is the witness Lily Yu. She is not going to identify the defendant. Mr. Thau will not be able to discover the photo in any other spread, despite his diligent effort to do so.

THE COURT: We might move on.

MR. THAU: It certainly shows a bit of bad faith on the part of the agency that chooses to put a Joanne Chesimard, whom everyone knows is incarcerated and was apprehended, and could not have possibly robbed that bank.

THE COURT: Apparently everyone but the one teller, Lily Yu, because the Government is not going to even use her identification, so, under the circumstances, there is not much to be made of that point.

MR. THAU: It goes to the good faith of the individual agency.

THE COURT: Perhaps the individual agent, and since we don't have any identification arising from that situation I suggest it is harmless at this point.

Mr. Reilly.

MR. REILLY: In response to Mr. Thau's point with respect to her failure to identify at the hearing, my understanding of the purpose of this hearing, whether prior out of court identifications would somehow affect the subsequent in-court identification, not to find out whether these witnesses in court today and yesterday would identify the defendants. If that was the subject of interest to Mr. Thau, he surely could have asked them.

In any event, even if they did pick them out that could be used then as subsequent evidence as a prior out of court identification.

Secondly, with respect to Miss Rivera, with all due respect to Mr. Thau's efforts, I don't think his geometry really proved very much. Mr. Thau himself was seated in a chair and had a very fine view of your Honor who occupies about the same relative angle as the bank robbers were at the bank in question. I might say he was at a greater distance than was Miss Rivera.

Again, with respect to the photographs of the Manufacturers Hanover Bank, I think, first of all, it was stated by Miss Churilla that she only got a fleeting glance of one of those photographs. She said it was of no help to her at all and in fact she was able to identify it immediately. She, as with all of the witnesses, had ample opportunity at the time of the bank robbery and ample reason to remember vividly these two defendants or the individuals who were robbing the bank tellers.

So I think even if your Honor could reach some determination that these photographs were somehow suggestive, the fact that they all had independent opportunity under very good lighting conditions, with no obstructions

to view these people for more than a fleeting glance, that it could not lead to the likelihood of irremediable misidentification, which is the standard.

I add finally with respect to these surveillance shots, there is case authority which says that these are actually the res gestae of the event. These weren't photographs taken of a different bank robbery or of some event unrelated to a bank robbery where the defendants were being pictured.

In any event, it doesn't have any bearing on the Simmons question before you. We don't rely on that, your Honor, since the other factors weigh so heavily to allow all of these identifications.

I think your Honor has before you the spreads. There appears to have been a conscious effort to be fair and to use the major characteristics of the suspect with respect to all of the photographs.

MR. THAU: May I add two things.

With reference to whether I have a clearer view of your Honor, Mr. Reilly ought to understand that as I'm sitting here my eyes are just about level with the top of your Honor's bench. From that vantage point I can see half of your Honor's torso. There is no comparison between our relative positions, yours and mine, and that

of Miss Rivera and people who were on the other side of the counter.

With respect to the surveillance shots being part of the res gestae, that is precisely where the mistake, perhaps, crops up.

41 Isn't it obvious that if the victim of a crime has little opportunity to observe the perpetrator with the lighting conditions, the number of perpetrators and the angle, so that if you show him a photo of that very crime together with a spread in which one of the perpetrators, the alleged perpetrator is depicted, that that res gestae photo is invariably going to lead him to the photo sought to be picked out? It is so obvious that I don't think it requires any elaboration.

THE COURT: Thank you, Mr. Thau.

You made two points to which I would address myself specifically. Your first point was that Special Agent Roach showed the bank surveillance photos in the first instance to Charlene Churilla and Celinda Rivera and thereafter showed them the spread of the female subjects.

I credit the testimony of Celinda Rivera that she saw the spread of female photographs before she saw the surveillance photos, and I also credit the testimony

of Charlene Churilla that at best she had only a fleeting glance at the surveillance photos and that they played no part in her identification of Debra Green.

Turning to the other point that you made, the matter of the kerchief, I would note again that Charlene Churilla as well as almost all of the other teller witnesses who were questioned on the subject indicated that the kerchief played no part in their identification of Debra Fennell Green.

I recall this specifically from the testimony of Charlene Churilla and also from the testimony of Celinda Rivera. Celinda Rivera added something which I found most significant. After she indicated that the kerchief played no part in her identification of Debra Fennell Green, she added, and I quote from my notes, which may not be totally accurate, but I quote:

"It was her eyes."

I found that the eyes of the defendant, as they appeared in the photo spread which is Hearing Exhibit 5, were distinctive and under the circumstances I will let the identification by Celinda Rivera stand.

The witness Gene White was never shown any photos of the female defendant and, as I recall, was never, since he had been transferred to a training program

at another bank, shown these surveillance photos.

Robert Windram, who identified the --

MR. MITCHELL: Your Honor --

THE COURT: The male -- yes.

MR. MITCHELL: On the Windram testimony, which is a similar transaction, I was going to take that up separately.

THE COURT: Take it up now.

MR. MITCHELL: On the Windram situation, we have a similar transaction situation and when Mr. Windram was given the first spread, which consisted of six pictures, the day after the holdup, he was unable to positively identiy the holdup man, but he did pick out two photographs which he said looked like the perpretrator.

THE COURT: Actually he testified that he made no identification on the first occasion. The agent in that case, Agent Russell, testified that he picked out two persons, Toby Raines and James Green.

I just make that comment because what my notes indicate is that Robert Windram, when he testified, indicated that he was unable to make any identification.

MR. MITCHELL: I know that.

The next thing is that approximately three weeks later, on March 19 he is now given a spread of seven photo-

graphs, six which are not of James Green, and are entirely different from the five that were originally shown to him. So that if he had any process of recollection the same photograph of Green would be thrown at him twice.

THE COURT: It wasn't the same photograph twice.

MR. MITCHELL: It was the photograph of Green. Green would be thrown at him twice. I say that sort of taints the identification and taking into consideration the fact that it is a similar transaction, that in defending it we should have to go through the entire robbery as if it were a separate count of the indictment, although it isn't, I think your Honor should exercise his discretion and exclude the similar transaction. As you said before, why gild the lily.

THE COURT: The only problem is that it is interesting to note that the "similar transaction" occurred on the same date as the Manufacturers Hanover robbery, the first robbery being at Manufacturers Hanover at 11.25 in the morning and the second being at the First National City Bank at 1.15 p.m. in the afternoon.

Those acts being so close in pint of time lead this Court to conclude that they are "similar acts"

and under the circumstances, although the Government might in the final analysis be well advised to hold that matter back since they have considerable other testimony, I am not going to preclude them from offering proof in this regard.

MR. THAU: I join in Mr. Mitchell's motion since I think that inures to my client's detriment, even though that witness didn't identify my client. I think it does inure to her detriment. I would further add, your Honor, that a similar act is not to be offered as proof of propensity to commit the crime charged, and isn't it obvious from your Honor's analysis which from a factual standpoint is quite correct that these banks were not far apart and that these two jobs were pulled one right after the other; isn't it obvious that no jury could possibly take that proof for anything other than propensity to commit the crime charged?

42 THE COURT: No, I'll give appropriate instructions.

MR. THAU: I'm sure your Honor will, but the Court well knows that it is very difficult not to think of a pink elephant.

THE COURT: Yes, that is true.

As far as this is concerned, and we are dealing

now with the identification of Debra Fennell Green, there isn't any by Mr. Windram, so I don't think you have the identification problem, Mr. Thau. I think the identification problem is with Mr. Green and I suggest that under the circumstances there is nothing in the two spreads shown which this Court has concluded is impermissibly suggestive. Mr. Green's picture did appear twice. I suggest it was different pictures of Mr. Green and they were shown to the witness approximately three weeks ago. There was no conversation or otherwise which was elicited which would lead this Court to conclude that there were any suggestions made.

Indeed, I would think that if there were suggestions made the witness would certainly have been able to identify both of the parties who he did in fact choose. Under the circumstances I would be prepared to overrule any objections regarding Mr. Windram.

The last teller witness who testified and whose identification would be offered was Donna Rae Morrison. I find that none of the prior comments of counsel, except for the matter of the kerchief, are in any way relevant here. She apparently identified both of the defendants from photo spreads which appear to this Court's view not to be impermissibly suggestive.

The first time photos were shown to her she appears to have done it in a short period of time and I would suggest under the circumstances her identification both of the defendants will be permitted to be made to the jury.

That is the decision of the Court.

MR. THAU: Your Honor, I apologize for not having covered a certain point which I had not picked out in my notes but which I think is vital. Going back to the Churilla-Rivera team from Manufacturers Hanover, your Honor may recall that Mr. Rivera, who was the second of the two to be shown the women's spread, testified that she was given these photos upside down.

Now, all these photos have names. Her recollection was that the backs were blank.

THE COURT: Yes, and I credit her testimony in that regard. You did not discredit her in that regard.

Miss Churilla, who did sign did not indicate at any time, and I listened for this in both their testimony, that she had signed before Rivera and had seen the backs of the photos. There is nothing in the record onthat.

MR. THAU: No. One thing is certain as a matter of common sense, that one of these ladies had to sign her name to the back of my client's picture before

the other did.

THE COURT: But whoever signed could have signed after both had identified and there is nothing in the record that was elicited by counsel, and counsel conducted an extensive cross-examination yesterday of both of these witnesses, which would lead this Court to conclude that there was any writing on the back of any photograph relative to your client which was seen by either of these ladies before they made their identification.

MR. THAU: I disagree. Miss Rivera said unequivocally that when she signed that photo there was nothing else on the back of it. Since Miss Churilla's signature appears there it is also obvious, is it not, that Miss Churilla signed her name after Miss Rivera and therefore when she signed it she saw Miss Rivera's signature there.

THE COURT: Is there anything to rebut the inference that she saw the face of the photograph and identified the person pictured thereon before anybody, Miss Churilla, Miss Rivera or anyone else wrote anything on the back of the photograph?

MR. THAU: No.

THE COURT: If you had wanted to bring that out you had the opportunity to do so. There is nothing

in the record from which the Court can reasonably draw the inference which you request be drawn.

MR. THAU: All right.

THE COURT: This is the decision of the Court:

The Court finds that the Federal Bureau of Investigation showed photo spreads containing between six and nine photographs to varuius tellers employed by the banks which are alleged to have been robbed and, in addition, showed certain surveillance photos to those tellers.

Having examined the photographs, all of which were of black males and females, and having heard the testimony of the tellers, the Court finds that the photo spreads which were used by the Federal Bureau of Investigation's special agents were not suggestive.

The Court finds that the identification procedure was not so suggestive as to give rise to a substantial likelihood of misidentification.

Simmons verus United States, 390 U.S. 377, 384 (1968).

The testimony of the tellers who identified the defendants indicated that they had approximately one to four minutes to observe the defendants at distances of from two to fifteen feet during daylight hours in well

lighted banks, with the tellers having a strong motivation to remember the defendants, the tellers being the victims of the crimes and in several instances having testified to the Court that they had been instructed in their training to observe persons who were perpetrators of bank holdups.

Accordingly, the defendants' motion to exclude the identification made by the eyewitnesses Charlene Churilla, Celinda Rivera, Gene White, Robert Windram and Donna Rae Morrison is denied.

It is so ordered.

We'll proceed now to the next matter.

MR. REILLY: I just want to make clear for the record that Mr. Thau's statement about Windram:

Windram did not make identification from the photographs.

But you'll recall that he had no hesitation in picking both defendants out in court and we intend to ask him whether he recognizes the male and female during the course of the trial.

THE COURT: Very well. I thought he had made an identification of the male defendant from the photographs.

MR. REILLY: Yes, he did, no question about

that. He did not make it for the female, but when he came in this court he had no difficulty making out a male and female identification.

MR. THAU: I would object to that as being unnecessarily inflammatory, that is, the nature of that proof as a similar act. It doesn't go to a lineup as to him.

THE COURT: Very well.

We will take a short recess.

(Recess.)

THE COURT: You may proceed, Mr. Reilly.

MR. REILLY: Mr. Roach.

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E D W A R D J. R O A C H , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

MR. THAU: We will waive the pedigree.

THE COURT: We will take judicial notice of the background of Mr. Roach, who testified yesterday.

Q Mr. Roach, were you on duty on March 12, 1976?

A Yes, I was.

Q Did you participate in any way with the processing of the defendants James Green and Debra Green subsequent to their arrest?

A Yes, I did.

Q When did you first come upon Mr. and Mrs. Green?

A I first came in contact with the Greens at the Midtown North Precinct of the New York City Police Department.

Q About what time do you recall that was?

A Approximately 3.30 in the afternoon.

Q When you arrived at the precinct, where were they?

A They were being detained in separate rooms.

I believe Mrs. een, Mrs. Debra Green was being confined to a squad room, what is commonly referred to as a squad area or detective's room, and Mr. Green was being detained, James Green, in an interview room, off to one side, separate from the detective's room.

Q Did you have any discussions with James Green?

A Yes, I did.

Q Did you advise him of his rights?

A Orally, yes.

Q When you say orally, what did you advise him?

A I advised him that he was being charged for bank robbery; that he had a right to remain silent; he didn't have to talk to detectives or agents; that he had a rig. t to consult an attorney, retain an attorney, and if he could not afford one one would be provided him by the Court, and if he desired to talk to either the detectives or agents at this time he had a right to stop whenever he wanted, and that anything he said to either detectives or agents could be used against .m.

Q Did you have any discussion about taking him into Federal custody?

A Yes, I did.

Q What was that?

A I advised Mr. Green at that time that I considered him to be a prime suspect in a number of bank robberies other than for which he was being charged on this particular day both in the New York City area and in New Jersey.

I advised him that I would attempt to expedite any police processing that was remaining to be done on this afternoon on March 12, 1976 at the precinct in an effort to remove him, transport him physically myself to the FBI office in New York.

At this time I said if he desired to cooperate with the FBI it would necessitate he giving me or allowing me to write out what we called signed statements. In effect, the signed statement is a written account of his participation inthe robberies in which I was investigating.

Q Mr. Roach, do you want to break off at this point.

THE COURT: Yes, would you break off briefly.

Mrs. Green, you will go with the matron. We will recess until you return.

(Recess.)

THE COURT: Please read the last answer, Mr. Reporter, to get the continuity.

(Record read.)

A At this time Mr. Green stated that he would do this; he'd appreciate being removed from the police precinct as soon as possible and being taken in custody by the FBI seemed to him a viable alternative to remaining in the precinct.

There was a lot of confusion there, a lot of crowd. He agreed to furnish the signed statements and volunteered another one that I wasn't even aware of, another robbery over in Newark.

So, I did as best I could to get everyone involved removed from the precinct and transported back to the FBI office. We took over some interview rooms and began the processing procedure and I began to interview James Green.

Q Mr. Roach, was this back at FBI headquarters?

A Yes, after being transported to FBI headquarters.

Q Did you have any conversation at the precinct, did you have a conversation concerning a search of any residence that he occupied?

A Yes, I did. He had given his address to the arresting police officers and repeated it to us and at this time I advised him that there was still a great deal of money, approximately $14,000, missing from the bank

robberies that he was suspect in and although the gun had been recovered at the time of the arrest by the FBI, it was incumbent on the FBI and myself in particular to get a search warrant to go to the address he had given. Although he advised me that no money was left, he gave me an oral consent to search the residence hotel in upper Manhattan.

I then called my office. I had a brief conversation with the other agents. None of us had a consent to search form on our person at the time, so what we did, we called our office and had the form read to us over the form and it was copied verbatim by an agent at the precinct, was taken to Mr. Green in the interview room at the precinct where he read it -- I read it to him and he signed it, and at this time I again telephonically contacted my office and advised them that Mr. Green had signed the consent to search form and they should dispatch agents to this address and conduct the search.

MR. REILLY: I am going to have marked as Hearing Exhibit 23 for identification a one-page handwritten statement dated 3-12-76.

(Government's Exhibit H-23 was marked for identification.)

Q Is this the consent to search form that you had

made up?

A Yes, it is.

Q Does it have Mr. Green's signature at the bottom?

A Yes, it does.

Q Did you ask Mrs. Green whether you could search her premises?

A No, I didn't.

Q Did Mr. Green advise you whether they were living in separate rooms or not?

A No. He said they were together, that they were staying together at this address.

MR. REILLY: I offer in evidence H-23.

MR. THAU: I have no objection to the introduction in evidence of this exhibit, it being understood, of course, that I do not regard this exhibit as an intelligent, knowing, binding consent on my client.

THE COURT: Very well. Even though the consent was signed by her husband of a premises which apparently was being jointly occupied?

MR. THAU: His signature doesn't mean anything as proof of it. I can tell your Honor that in the case I tried just last week there was also a consent to search form purportedly signed by my client and there

was suppression of what was found in the apartment.

THE COURT: I have your point. We will admit the document for the purpose of this hearing, and as far as its validity is concerned, I will hear you on that.

(Government's Exhibit H-23 was received in evidence.)

MR. REILLY: The Government has no further questions.

THE COURT: You may inquire, gentlemen.

MR. THAU: I'll take it for both of us, if your Honor pleases.

CROSS EXAMINATION

BY MR. THAU:

Q Agent Roach, did you ascertain from the police who arrested these defendants what time they had arrested them?

A Yes, the approximate time.

Q What time?

A I believe it was stated to me as twenty minutes to three in the afternoon.

Q You saw them at about 3.30?

A Between 3 and 3.30, yes.

Q Have you any experience in dealing with drug

addicts?

A Yes, I do.

Q And you know, don't you, that people who are addicted to the use of drugs suffer withdrawal symptoms?

A Yes, I do.

Q And you have seen people suffering from withdrawal symptoms?

A Yes, I have.

Q And you are aware that people who are suffering from such symptoms actually suffer physically; right?

A Yes.

Q Their nose runs, they shake, they have backaches, and so on and so on; right.

A Right.

Q When you first laid eyes on these defendants did you detect any signs which you took to be drug withdrawal?

A No.

Q Is it part and parcel of the pe[illegible]ee interrogation of a prisoner to ask whether that prisoner is on drugs?

A Yes.

Q At the time you had arrived at the precinct where these two defendants were kept, they had been inter-

viewed by the arresting officers from the Police Department; is that right?

A They were in the process of being interviewed.

Q Had they already, to your knowledge, covered the issue of whether both defendants or whether either one of them was addicted to drugs?

A I don't know.

Q Did you look at the police file and papers to ascertain this?

A No.

Q You certainly did not want to take a statement, did you, or a consent to search from someone who may be suffering an illness, either physical or mental, such as would deprive that person of his or her freedom to act intelligently and knowingly; is that right? Do you understand what I'm asking?

A I think I lost you.

Q Let's say you learn about a prisoner, that that prisoner has a long history of psychiatric confinement.

A You say I learned about that?

Q Yes.

A Right.

Q You come into a precinct, as you did here, and

the sergeant tells you, "Mr. Roach, you know this guy has spent 22 years in Bellevue psychiatric ward."

A That was not the case here.

Q I'm not saying it is.

Under that kind of circumstance you wouldn't go around to give Miranda warnings and taking a statement, would you?

A No, sir.

Q You would want to satisfy yourself that you were dealing with someone who understood his rights and who could assert his rights to silence and counsel; right?

A Correct.

Q You know also that someone who may be suffering from withdrawal is a person who may not be capable of waiving his right to remain silent and his right to counsel?

A It is possible. It would have to be very severe.

Q So you made no inquiry whether either one of these defendants were into drugs?

A I was informed that they were both narcotics addicts.

Q Did you have any information concerning the

extent of the addiction of each? By "extent," I mean the amount of drug dispensed to them on a daily basis.

A Money spent a day?

Q Yes.

A Not until Mr. Green told of the money spent per day between the two.

Q Did you have a notion of how severe the addiction of each was?

A Yes, I think I -- severe -- I had a notion to how badly addicted they were and the fact that they were adcicts, that was -- I could see that. They were certainly not in very bad shape at the time of their arrest.

Q You didn't participate in the arrest of these defendant?

A No, I didn't.

Q Do I understand you correctly that the inducement that you held out to Mr. Green for his signing that consent and certain admissions or confessions -- the inducement you held out to him was that you would take him out of that unpleasant precinct and take him under your Federal jurisdiction?

A The inductment, if you want to call it the inducement -- there was no inducement --

Q You told me he was very appreciative of the opportunity you were giving him.

A Right. You see, at this time, and not to mean any detriment to the New York City Police Department, the condition was chaos. The press had heard of him. They were trying to make a Bonny and Clyde story out of this, believe it or not, and the press and TV cameras were trying to crowd into the detective's room, and there was a lot of confusion reigning and I just observed that if the detectives were to complete their processing of the prisoners it could take hours if I didn't stay on their superior officers, one sergeant in particular who is a personal friend of mine, and I normally wouldn't care how long it took. I would hasten to get the prisoners in Federal custody as soon as possible to get them arraigned, lodged, whatever. However I wanted to ascertain for my own mind if in fact I had prisoners here that I was about to take into Federal custody that had any chance of being cooperative with me at all.

Now, the taking of signed statements -- to adhere to the Bruton rule I would have needed about ten statements from each one.

Q Excuse me, I think we are getting away from the question.

A It would have taken a great deal of time in handwriting. I was going to do this myself. It takes quite a deal of time back at the FBI office with photographing, fingerprinting, processing. I was still entertaining thoughts of an arraignment that day.

Anyway, we couldn't do that, regardless. I wanted to find out myself if in fact I was going to be taking all of these signed statements and if I would go to the sergeant in charge of the arrestin- detectives, the other group of major case detectives, implore, hasten their process as fast as possible to avoid as much contact with the press and to save as much time as possible. That was the only inducement.

THE COURT: At any time did Mr. Green say to you, "I'd like you to get me out of here and take me into FBI headquarters"?

THE WITNESS: No.

THE COURT: Did you at any time say to him, "Look, we'll get you out of here, where there is all of this noise and everything else, and we'll get you into Federal custody where it will be quieter"?

THE WITNESS: No, he was being treated well by the detectives. He admitted that.

Q You told us on direct examination, did you not,

that Mr. Green appreciated your taking him from the precinct over to the FBI; do you remember that?

A I appreciated leaving the precinct myself.

Q Never mind your appreciation.

You told us that he was appreciative?

A He smiled in the affirmative when I suggested this.

Q He was aware, Green, of all the chaos and confusion and the press?

A He was aware that it was around him. It wasn't in his immediate interview room.

Q Were you in a locked room with him?

A There was a detective standing at the door and another detective in the room with him and myself.

Q And he was eager to get out of that precinct; right?

A He nodded his head in the affirmative that he would like to be removed; that he would give these signed statements.

Q Please address yourself to the question, if you don't mind.

A He never said, "Get me out of here." He was --

Q You told him that you would get him out of

there if he began to cooperate with you?

A Not if he began to cooperate. He was being taken to Federal custody either way.

Q Maybe those were your intentions, but as far as what you were telling him, didn't you in fact tell him, as you told us on direct examination, that in order for you to be able to take him out of that police precinct and take him in Federal custody he would be obliged to give you certain statements?

A No.

Q You did not tell him that?

A No.

Q What did you tell him in the area of what he would have to do in order for him or for you to take him out of the precinct?

A I said he was being taken into Federal custody, being charged with a specific bank robbery on a warrant that I had obtained here in the Southern District.

Q Did you tell him whether he would ever sign a statement or did not, you would remove him from that precinct and take him under Federal wings?

A I just said he was being taken into Federal custody, period.

Q Is that what you told him?

A He was being taken into Federal custody whether he gave signed statements or not.

Q I didn't ask you what your private intentions were to do eventually. I'm asking you what you told this man. Do you understand the distinction?

A Yes.

Q Did you at any time tell him in words or substance:

"Look, this is a circus around here" --

A No.

Q -- "with the press; it is confused, it is lengthy"?

A No.

Q "It is uncomfortable"?

A I said, "We are going to try to remove you as soon as possible and transport you back to the FBI office and I would like your cooperation in furnishing these signed statements."

He agreed. It was --

Q So that your removing him was not stated as a condition of removal?

A No, his statement was not a condition of removal, of course not. He was going to be taken in Federal custody. It was our warrant.

Q I'm not interested in what your ultimate intentions were to do with the man. I am interested in how you presented those intentions to him. Do you understand the distinction?

A Just what I said, he's being taken in custody.

Q Now, this consent to search. Was this signed in the precinct or FBI headquarters?

A At the precinct.

Q That is one of the signed statements which you might just as well have taken later on at the FBI headquarters as it was your intention to take statements of the details of these crimes; is that right?

A No.

Q Couldn't have been done that way?

A Incorrect.

THE COURT: Of course it could have been done. Anything could be done, Mr. Thau.

MR. THAU: Yes, you are right.

THE COURT: You could go to the hotel, stake out the room and wait for 24 hours until a warrant was produced or eight hours. Of course, you do anything. Anything is possible.

Q How long before this day is it that you first

suspected James Green being involved in these robberies, or any of them?

A I was aware of the fact that another agent assigned to my squad was looking for Mr. Green on a fugitive warrant out of Northern New Jersey.

Q Did you ascertain where he lived, James Green?

A At that time?

Q Yes.

A I thought he was a resident of New Jersey.

Q When you questioned Mr. Green regarding a search of his apartment, did he tell you whether it was a hotel or a rental apartment?

A I think he said it was a hotel.

Q Did you ask him in whose name the room or apartment was rented?

A Yes, he I did.

Q What did he say?

A I can't recall. I can't recall whether he said it was in James Green or an alias. I really don't remember now.

Q A male alias?

A I don't recall. I don't recall. But I know I had him sign his true name to the consent to search.

Q Who is Homer Hoffman and James Bokal?

A Two FBI agents.

Q Were they at the precinct?

A No, they weren't.

Q These are the two gentlemen whose names you inserted in that form purporting to be James Green's authorization for a search; is that right?

A they were the agents that were dispatched from the FBI office when Mr. Green signed the consent to search.

Q So you were having him essentially consent to having someone whom he had never met search his premises; anyone you sent; is that right?

A He was giving me the consent.

Q Yes.

A But I told him that other agents would conduct it. I was going to remain with him.

Q His consent isn't made out in your name, is it?

MR. REILLY: Objection.

MR. THAU: Withdrawn. It is in evidence.

Q You say that you gave this man his Miranda warnings?

A Yes.

Q Did you cause him to sign at the bottom of these warnings that he had received those warnings?

A Back at the FBI office he was given what we call an interrogation advice of rights form. This was when he refused to give the statements that he said he would be interested in giving earlier. I can't recall if he executed it by signing or he refused to sign at this time.

Q Was the first you had given him his Miranda warnings?

A The first time on paper -- I had given him them earlier at the precinct. As soon as we got back to the FBI office I gave him them in written form.

Q At the precinct you never caused him to sign an acknowledgment that he had received his Miranda warnings?

A No.

Q You didn't write such a form out as you did the consent to search form?

THE COURT: Did he give you an oral statement at the precinct?

THE WITNESS: No, we didn't even begin questioning him.

Q Was it before or after you gave him the

Miranda warnings that you said to him that $14,000 was missing and you were interested in recovering it?

A Before or after?

Q Yes.

A After, after.

Q Who was present when you gave him his Miranda warnings?

A Another detective, another New York City Police Department detective.

Q What is his name?

A Angelo Garcia, I believe.

Q Were both defendants in that room when you gave those warnings?

A No, I said they were separated.

Q After each warning that you gave this fellow James Green, did you question him to ascertain in your own mind that he understood?

A He said he understood. He had been through it many times before.

Q Is that what he said to you?

A Yes.

Q Did you nevertheless inquire whether he really understood or were you satisfied with his representation that he did understand?

A I was satisfied that he understood his rights. He had already been previously advised of his rights at the time of his arrest, then back at the precinct again by the detectives, and I was saving my form until I got him back to my office.

Q With respect to the right to search, did he ever tell you that he had given consents to search many times before?

A No, he didn't.

Q Was it your impression, therefore, that while he may have been given his Miranda rights many times before you were dealing with a man who was being asked to consent to a search of his apartment for the first time by a law enforcement agent?

A I had no idea how many times he did it.

Q Did you tell him that he could put you to the burden of getting a search warrant if he wanted to?

A No.

Q You didn't tell him that?

A My intention was to get a search warrant, but that he expedite the matter. He could sign a consent to search form and we could do the search right away. It could be conducted while he was being sent back, transported back to our office.

Q Did you tell him to sign the consent to search form because "A judge will give me one any time"?

A No, I didn't tell him that.

Q Did you tell him that you were going to go before a judge to seek a consent warrant unless he consented to a search onthe premises?

A I said, "I will try to get a search warrant from the Court to search your residence, but you can give your consent here and now and I can dispatch agents right away."

That is the only thing --

Q Is this pretty much your approach to the issue of the search warrant, the way you just told it to us?

A Yes, that is exactly --to the best of my knowledge, that is what I said.

Q Did you then proceed to say to him, "Look, your home is your castle and you haven't got to consent to my going in and searching it"?

A No, I didn't say that.

Q Did you tell him that anything that was found in his apartment might be employed against him in a court of law?

A I think the only thing I said about that is that we were interested in recovering the money.

Q So that the answer to my last question is "No"; is that right?

A I just said, "We're interested in recovering the money," those words, the main thing we were after.

Q Did you say to him that before he consented to the search of his apartment he had a right to consult with a lawyer on whether he should sign such a consent?

A No, I didn't.

Q Did you write this statement or did someone else?

A Someone else did.

Q Did this defendant have a key to the apartment in his possession at the time?

A I don't think so. I don't know.

Q Did you interview Mrs. Green also on that occasion?

A I introduced myself to her at the precinct, that is all.

Q Did you secure a similar consenting document from her?

A No, I didn't, just from Mr. Green.

Q Did you ask her?

A No, I didn't.

Q You never went to the apartment?

A No, I didn't.

Q Did Mr. Green tell you that he had proceeds from any bank robberies in the apartment?

A No, he said --

Q Before you asked for this consent to search?

A No.

Q In fact, he denied it; isn't that right?

A He said the money had all been spent on drugs and shopping.

Q Agent, you were bluffing this man, weren't you, when you told him that you were going to get a search warrant anyway so he might as well sign?

A Bluffing?

Q Yes.

A I said my intention was to seek a search warrant, I would ask for one.

Q Tell us, if you would, what probable cause you would have stated in an affidavit of seeking a search warrant had this man refused his consent? What was the probable cause that you then had to take before a judge? Tell us.

A My probable cause would have been that no moneys had been recovered; that two suspects had been arrested, two subjects had been arrested. They had

been identified by eyewitnesses and no moneys had been recovered at this time. However, the other evidence -- a gun had been utilized, a demand note that had been utilized had been recovered; that he had given us this address as his residence at the time of his arrest; and the probable cause, since no moneys were on their person it would be at their apartment, if any was left.

Q You were going to state in such an affidavit that the suspects had been identified. Tell us which teller witness had identified Debra Green before March 12?

A Pardon, who had identified her?

Q You said the suspects had been identified. Did you mean by that a bank --

A At that time Mr. Green.

Q One suspect had been identified?

A Mr. Green. As far as I know about my own individual case, just Mr. Green at this time.

Q Did you have any reliable informant tell you that he, the informant, or she, the informant, had seen in the Greens' apartment any proceeds of these robberies?

A No.

Q Since a gun had been found in Mr. Green's possession when he was arrested, certainly you weren't looking for the weapon in the apartment; is that right?

A No.

Q Since Mrs. Green is alleged to have had a demand note on her when she was arrested, certainly you weren't going to arrest as one of the contrabandss you were looking for in the apartment such a demand note; is that right?

A The money, other articles of -- just the money and other articles of money.

Q How many search warrants have you sought in your career?

MR. REILLY: I would like to object at this juncture. I think this line of questioning is now getting too speculative.

MR. THAU: I will tell your Honor why I am examinining in this area:

To begin with, this agent, it seems to me --

THE COURT: Don't tell me. Proceed.

MR. THAU: Surely.

Q So that all you would have put in an affidavit for a search warrant was basically that you had in custody a man suspected of bank robbery; that certain moneys had been taken from banks and had not been recovered; that your suspect did not have on him when arrested the proceeds which were still missing, and that from those

circumstances you had probable cause to believe that some such proceeds were in his apartment?

A Yes.

Q You wouldn't make book on the likelihood that you'd get your warrant, would you?

THE COURT: Sustained.

MR. THAU: Thank you.

MR. MITCHELL: I have no further questions.

REDIRECT EXAMINATION

XX BY MR. REILLY:

Q Mr. Roach; on March 9, 1976 did you make an application for an arrest warrant for James Green a nd Debra Green?

A Yes, I did.

Q Did you make out the affidavit in that case?

A Yes, I did.

Q Was that arrest warrant granted?

A Yes, it was.

Q When you did take Mr. Green back to the FBI headquarters, did he give you any statements?

A No, he didn't.

Q What was his behavior at that time.

A Completely uncooperative.

MR. MITCHELL: Objection, your Honor. Nobody

has to give a statement.

THE COURT: I am not going to hold that against him. He has a p rfect right to remain silent. That is part of the instruction.

A He did.

THE COURT: The arrest warrant was for who?

THE WITNESS: James and Debra Green.

THE COURT: For both of them?

THE WITNESS: Yes, your Honor.

Q At the time that you met James and Debra Green at the precinct, did you notice any withdrawal effects?

A No, I didn't.

Q Have you observed defendants when taken into custody to be in withdrawal from drugs?

A Yes, I have.

MR. REILLY: No further questions.

MR. MITCHELL: Have you the arrest warrant?

MR. REILLY: I have a copy of the arrest warrant.

MR. MITCHELL: Was that in the original complaint?

THE COURT: Will you show it to Mr. Mitchell, please?

MR. MITCHELL: I have a copy.

THE COURT: Is there anything further, gentlemen?

MR. MITCHELL: No, your Honor.

MR. THAU: Very quickly.

RECROSS EXAMINATION

BY MR. THAU:

Q You are aware, of course, aren't you, Detective Roach, that the standard for the obtaining of an arrest warrant merely has to state that your subjects have committed a crime and that the standard for a search warrant has to show probable cause that there is something in certain premises; is that right?

A Yes.

43 Q You were present at the arraignment of these defendants, Agent Roach, before the Magistrate, weren't you?

A Yes, I was.

Q Magistrate Raby?

A Yes, I was.

Q And you saw me representing Debra Green there, didn't you?

A Yes, I did.

Q Have you any recollection whether at that time I asked that the Magistrate mark the commitment papers

"Medical attention requested"?

A At my suggestion you did.

Q And you suggested it, did you not, becasue your prisoners were ill?

A They were showing, especially Mrs. Green was showing, beginning to show signs of withdrawal at that time -- that was the next morning -- and it was after I had advised officials at the Metropolitan Corrections Center that they were both addicts and they wanted to see a physician and they requested to be placed on methadone maintenance immediately.

Q They were arraigned the day after their arrest?

A Yes, they were.

Q They had been lodged at the MCC the night before the arraignment?

A Yes.

Q Did you ascertain whether Mrs. Green and Mr. Green got any kind of medication that evening?

A No. I made the request the next morning. They both advised me they had received none.

MR. THAU: Thank you.

MR. MITCHELL: Nothing further, your Honor.

THE COURT: Thank you very much.

(Witness excused.)

THE COURT: It is 1.15. We will recess until 2.30.

(Recess taken until 2.30 p.m.)

AFTERNOON SESSION

(2.30 p.m.)

MR. MITCHELL: Your Honor, I just wanted to find out whether Mr. Reilly is going to put in any more on the search at this time.

MR. REILLY: Yes, your Honor, I have given some thought to it and I have decided that the Government would like to call Mr. Bokal of the FBI as the last witness on the search matter.

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J I M C. B O K A L, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Bokal, where are you employed?

A I'm employed with the Federal Bureau of Investigation.

Q On March 12, 1976 were you so employed?

A Yes, sir, I was.

Q Are you a special agent attached to the New York office?

A Yes, sir, I am.

Q Did you receive a phone call or other notifica-

tion in connection with the arrest of James Green and Debra Green on that date?

A On the other notification I wasn't personally phoned. I received notification through another agent in the office that James and Debra Green had been arrested.

Q Did there come a time when you were asked to do something in connection with their having been arrested?

A Yes, sir, I was requested to assist another agent in a search of their present residence or the residence that they gave as where they were living at the present time.

Q Who was this other agent?

A The other agent was Homer Hoffman, also a special agent.

Q To you recall what time of the day this was?

A It was late afternoon. I would say approximately 4 o'clock, 4.30.

Q After receiving this notification, what did you do?

A Myself and Mr. Hoffman proceeded to 94th and Broadway on the west side to the Monterey Hotel and at that time we met with two detectives from the New York

City Police Major Case Squad and we then proceeded to a room in the hotel to do our search.

Q Did anyone take you to that room?

A Yes, the manager. We met with the manager and identified ourselves and were then taken to the room.

Q Did they let you in the room?

A Yes.

Q Did you make a search of the room?

A Yes, sir, we did.

Q What did fou find in the room, to the best of your recollection?

A To the best of my knowledge we found various items of clothing and drug paraphernalia and one suitcase.

Q Specifically did you find a gray overcoat with a fur collar in that room?

A May I refer to the notes?

Q Yes, you may.

A Yes, sir, we found a gray overcoat with a fur collat that was located in the closet.

Q Did you make an inventory of what you found in the room?

A Yes.

Q Do you have that with you right now?

A Yes.

MR. REILLY: The Government will mark first for identification a three-page document which purports to be an inventory, which is H-24 for identification.

(Government's Exhibit H-24 was marked for identification.)

xx Q Is that the inventory?

A Yes, sir, it is.

Q What did you do with the items after you had seen them in the apartment?

A After we had concluded the search of the apartment we took the items and put them in a suitcase and then we proceeded back to our office where we made the inventory.

Q Was that kept with the inventory, that is, were those items kept with the inventory?

A Yes, sir, we marked it and sealed it with evidence tape and then it has been maintained by us at 201 East 69th Street.

MR. REILLY: I offer H-24 for identification in evidence.

MR. MITCHELL: No objection at this time.

THE COURT: For the purpose of this hearing only, the inventory; is that correct?

MR. REILLY: That is correct. We have no further questions of Mr. Bokal.

THE COURT: Let me hear from Mr. Thau relative to the inventory.

MR. THAU: I have no objection.

THE COURT: Mr. Mitchell, you may inquire.

CROSS EXAMINATION

BY MR. MITCHELL:

Q When you got over to the hotel did you ascertain whose apartment you were going to search?

A Yes, sir, we had met with the management and identified ourselves. We were preceded there by the New York City Police Department and at that time the manager took us to the room which was reported to have been occupied by Mr. and Mrs. Green.

Q At this point you had this search warrant, this consent by James Green?

A Yes, sir.

Q Did you ascertain whether James Green was registered at the hotel?

A I personally didn't do that, sir.

Q Did any agent do it?

A To my knowledge, I'm not sure if that was the name they were using at the time at the hotel.

Q Did you ascertain in whose name the apartment was registered?

A I didn't, sir.

Q Did any agent to your knowledge do it?

A I believe that it was done either by the Police Department or by Mr. Hoffman.

Q The search was being conducted by you, was it not?

A It was conducted by myself and the police officers and Mr. Hoffman.

Q Weren't the defendants in the custody of the FBI by 4.30 in the afternoon?

A When we left the office they were not yet at our office.

Q Had not the message been that they had been turned over to the FBI agents and that you were to go ahead with the search?

A The information that I obtained was that they had been apprehended and this consent to search had been obtained.

MR. MITCHELL: I will call on the Government to produce the registration card for the apartment, if it exists.

MR. REILLY: I do not have the registration

for the apartment. That was never obtained from the hotel.

THE COURT: Is there any witness in the witness room from the hotel itself?

MR. REILLY: No, your Honor, we did not call a witness.

THE COURT: I would suggest, then, that you have gone as far as you can with this witness.

MR. MITCHELL: With this witness.

THE COURT: You may inquire, Mr. Thau.

CROSS EXAMINATION

BY MR. THAU:

Q Prior to making the search of the apartment, had you seen a consent to search?

A Had I personally seen one?

Q Yes.

A No, sir.

THE COURT: Had you had it read to you?

THE WITNESS: No, I personally had not. I was asked to assist.

Q Who was it that asked you to assist?

A The other agent that I went with.

Q Hoffman?

A Yes.

Q Did Hoffman tell you whether a consent authorized anyone in the world to search or an agency to search or specific persons to search?

A The specific wording to me was simply that a consent to search had been obtained.

Q And you did not know, did you, that the purported consent which had been executed authorized a very limited and specific number of persons to search? You didn't know that?

A No, sir.

Q Have you since seen the document which purports to be a consent to search?

A Yes.

Q And that document has your name and Hoffman's on it as the persons authorized to enter the premises?

A Yes, sir.

Q And nowhere in it does it authorize a member of the New York City Police Departmentment; is that right?

A No, sir.

Q In fact, the New York City Police came to the premises before you did; is that correct?

A They were at the hotel, sir. They did not enter the premises.

Q And they entered the room proper together with

you?

A Yes, sir.

Q And they assisted in the search?

A Yes, sir, they did.

Q What?

A Yes, sir.

Q And do you recall how many New York City policemen there were?

A There were two, sir.

Q So that all together there were four of you gentlemen?

A Yes, sir.

Q Do you very specifically who found the gray coat and seized it?

A To the best of my recollection, sir, it was Mr. Hoffman.

Q You certainly did not?

A No, sir, I didn't.

Q You told us that the search revealed some drug paraphernalia, I believe?

A Yes, sir.

THE COURT: I'm sorry, is that expected to be introduced?

MR. REILLY: No, your Honor.

MR. THAU: I think it has a probative value.

THE COURT: I'm not cutting you off. I am merely trying to ascertain what items from the search the Government intends to introduce. I gather that this gray coat with the fur collar is one thing. Are there any others?

MR. REILLY: If I may have the document I will tell your Honor.

We intended to also introduce a Navy blue tam.

MR. MITCHELL: Where is that?

MR. REILLY: The second page.

One brown leather handbag, one dark brown handbag, and that is it.

THE COURT: You may proceed, Mr. Thau.

BY MR. THAU:

Q Agent, did you make up this inventory?

A I assisted with Mr. Hoffman, yes, sir.

Q By drug paraphernalia do you mean hypodermic instruments, wrapping papers or do you mean actual drugs?

A There was a hypodermic needle and what else I don't recall, sir.

Q You don't recall any white powders of any sort being seized from the premises?

A No, sir, I don't recall.

Q You never took the phone call asking you to assist?

A No, sir, I did not.

Q Did Hoffman tell you that he had taken the phone call?

A No, sir, he did not.

Q So that do I understand you to say that some time that day your partner, Mr. Hoffman, came to you and said, "We're going up to 94th Street to search a room or apartment"? Is that basically waht he told you?

A Yes.

Q And he did not say to you at that time what authority there was for that search?

A He did. He informed me that there had been obtained a consent to search.

Q Did you ask him where the consent was?

A No, sir, I did not.

Q Did you ask him whether he had secured this consent?

A No, sir, I did not.

Q Did you ask him whether it had been a written or oral consent?

A No, sir, I didn't ask him.

Q Did you ask him to show you a written consent

in the event that consent had been made in writing?

A No, sir.

Q And of course you never met or saw the person who purportedly gave that consent before you made the search?

A That is correct.

Q Did you ask Hoffman whether a search warrant had been applied for and issued?

A No, sir.

Q Did you ask him what he knew about the probability that contraband wasn't in that apartment, which knowledge amounted to probable cause to believe that there was contraband in that apartment?

A No.

MR. REILLY: Objection, irrelevant.

THE COURT: Sustained.

Q In fact you made no seizure from that apartment of any moneys alleged missing from these bank robberies; is that right?

A No, sir.

Q No money at all was found?

A No, sir.

Q Agent,had you worked on this investigation prior to your search of the apartment?

Q Not directly, no, sir.

Q Had you knowledge of the name of either one or both suspects?

A Yes, sir, I did.

Q When Hoffman told you that you and he were going to conduct the search, did you ask him to specify exactly what it was that was sought to be recovered from that apartment?

A We discussed the reason for the search and I did not directly ask him, you know, precisely what we were after.

Q Was the reason basically to gather whatever was in it to see if there would be in that apartment something which might be used in the prosecution of these Green people?

A The reason was to find any additional evidence that might be obtained, I guess.

Q So basically you were there on a pleasure hunting expedition rather than in search of a very specific type and amount of evidence? You weren't there specifically for money, were you?

A Primarily we were there simply to conduct a search.

Q To turn up whatever might be useful to you;

right?

A Yes.

Q By the way, how long have you been with the FBI?

A Approximately three months.

Q Were you in law enforcement before?

A No, sir.

Q Have you ever applied for a search warrant?

A Personlly? No, sir.

Q Have you ever assisted on a detail team that applied for a search warrant?

A Prior to this?

Q Either prior or since?

A No, sir.

Q But you have training, don't you, in what it takes in the way of a preliminary showing to a Court before a Court is authorized to issue a search warrant?

MR. REILLY: Objection, your Honor, to the line of questioning as being irrelevant.

MR. THAU: We have an expert witness here who tells me basically that he is going there on a hunt.

MR. REILLY: I think we have established this morning, first of all, the consent search which has been signed authorizes special agents to conduct a complete

search of the premises.

Secondly, we have had testimony by the previous witness, Mr. Roach, as to the circumstances of his getting a probable cause warrant with respect to these two people and as to his reasoning why he wanted the FBI to further search, so I think that further questioning along this line is irrelevant.

THE COURT. Overruled.

Q You know that before a Court may issue a search warrant an assertion under oath by the one seeking the search warrant that there is probable cause that a specific premises has in it presently a specific type of contraband sought to be seized; is that right?

A Yes, sir, but we weren't there on a search warrant.

Q I understand that.

You have been trained, haven't you, Agent, to make a decision, an educated decision, whether the information you have on a specific case is sufficient to warrant an affidavit for a search warrant?

A Yes, sir.

Q And would it be fair to say that given the state of your knowledge respecting that apartment before you entered it, you did not have sufficient information

to get up an affidavit on the basis of which a Court would grant a search warrant; isn't that a fair statement?

A Yes, sir, but we did not issue --

Q The answer is yes?

A Yes.

MR. THAU: Thank you.

MR. MITCHELL: Can I just ask another question?

THE COURT: Yes.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q In this search did you take everything that was in the apartment other than the furniture?

A We took the items of clothing and, as I stated previously, the drug paraphernalia and the suitcase.

Q You left no items of clothing in the apartment; is that correct?

A I believe there were some other items left in the apartment, yes, sir.

Q What were they?

A They were items of clothing which were identified to have been belonging to another couple that was there also.

Q There was another couple present at the time of the search?

A No, sir, not at the time of the search. They came in immediately after we concluded our search.

Q And they took certain articles away from you claiming --

A They identified certain items of clothing.

Q What were they?

A I do not recall, sir.

Q Did you make a list of them?

A I didn't.

Q Did anybody?

A I don't know, sir.

Q Tell me this:

This entire list, how many articles were seized that belonged to that man?

A I don't have the sheet in front of me, sir. I couldn't tell you.

I believe there were six?

Q What?

A Six.

Q What were they?

A It would be the two ski caps listed second and third on the sheet.

Q Were they marked male?

A No, sir.

Q How did you know that they weren't female?

A I didn't, sir.

Q You didn't?

A No, sir.

Q Eliminate those. What are the other four items?

A They would be the green and blue print shirt.

Q What size was it?

A I have no idea.

Q Could it have been worn by a female?

A Possibly.

Q What else?

A The sweatshirt and the slacks.

Q What else?

A And the overcoat, I believe, was a male's.

Q Are you sure it was a male's?

A No, sir, I'm not positive.

Q Did you find any white sneakers?

A No, sir.

Q Did you find any leather jackets?

MR. REILLY: Your Honor, I am going to interrupt at this time. I don't think this goes to the nature of the consent search at all. It sounds more like cross-examination.

THE COURT: Yes, I think it is.

MR. MITCHELL: I will drop that line.

I have no further questions.

MR. THAU: Your Honor, very quickly.

CROSS EXAMINATION (Continued)

BY MR. THAU:

Q You said that as the search was being conducted a woman walked in?

A Just as the search was concluded, yes, sir.

Q Had you already gathered together all that you intended to remove from those premises when that couple walked in?

A We had gathered together all the clothing that was in the premises at the time.

Q When Hoffman told you that you were to accompany him, did he tell you that you were going to search or search and seize?

A I was informed we were to conduct a search.

Q By definition to search means to look; right?

A Yes, sir, and to obtain.

Q And to obtain?

A Yes.

MR. THAU: The Court wouldn't have a dictionary ready, would it?

THE COURT: I assumed that you brought one when you asked the question.

MR. THAU: I assume that we all spoke English.

THE COURT: Let's see if we could move along.

MR. THAU: Yes. Thank you.

THE COURT: Anything else?

MR. THAU: No.

MR. REILLY: The Government has no further questions.

THE COURT: Let me see counsel briefly on timing only. I notice it is 3.30 and I'm inclined to think that we should excuse the jury panel and call them back tomorrow, but let's discuss it.

(Discussion off the record at the side bar.)

(Recess.)

MR. REILLY: Would it be permissible to call Mr. Dokal on redirect. He has advised me of something that I would like to bring out.

THE COURT: Yes.

- -

J I M C. B O K A L, resumed.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Bokal, you mentioned before that there were two other people who came into the room just as you were leaving it. Can you describe them in stature?

A Yes, sir, they were -- my only comparison would be that they were quite a bit larger than the defendants, both man and woman individually.

Q Did they indicate in any way whether they knew the defendants?

A Yes, sir. When they arrived there they arrived at different times, approximately five or ten minutes apart, and the male came in and he had informed us that he was a friend of James. He knew him under another name and I don't, I can't recall the name right now. He had informed us that they had run into them in the hall or the lobby of the hotel the night before, or perhaps a day or so before that and had -- simply, James had offered them a room to stay in for the night because they had no other means to stay no place else.

Q Did he claim that the room that you were exiting, the room with these various items of property was his room?

A No, sir, it is just that they stayed there that night.

MR. REILLY: No further questions.

RECROSS EXAMINATION

XX BY MR. THAU:

Q When you say a couple, you mean a man and woman?

A Yes.

Q Your reason for coming back to the stand was your afterthought that the two visitors were both larger than the defendants?

A Yes.

Q So the woman, I take it, was considerably larger than Mrs. Green?

A Yes.

Q So large in fact that the two handbags that you seized would have been unsuitably small for that lady?

A No, sir.

MR. REILLY: If Mr. Mitchell has no questions I'll call for Noral Palmer.

MR. THAU: Was she an arresting officer?

MR. REILLY: Yes.

(Witness excused.)

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NORA LEE PALMER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mrs. Palmer, what is your occupation?

A I work for the New York City Police Department.

Q What is your position there?

A I work as a detective in the Major Case Squad.

Q How many years have you been on the New York Police Department?

A I have served the New York Police Department 12-1/2 years.

Q How long have you been on the Major Case Squad?

A Since 1976.

THE COURT: When did you become assigned to the Major Case Squad in 1976?

THE WITNESS: February 1976.

Q Prior to that time what was your assignment?

A I worked in the Narcotics Squad.

Q For how long?

A About seven years.

Q In what capacity?

A As an undercover detective and an investigator.

I worked other places too.

Q Have you had any training in identification during the course of your service in the Police Department?

A Yes, I have.

Q In connection with the Federal Bureau of Investigation, were you conducting any investigation in March of 1976?

A Yes, we were.

Q What was that?

A We were working on bank robberies in Manhattan South.

Q In particular, was there a known suspect for any of these bank robberies?

A There were two identified suspects we were looking for specifically.

Q For how many bank robberies?

A Five bank robberies in question.

Q To your knowledge, were these armed bank robberies?

A As I recall, there were four armed bank robberies and one that the weapon was not shown.

Q Did the major case squad compile a file for each one of these bank robberies to your knowledge?

A That is correct.

Q Did you in your capacity or in the course of your duties as a detective assigned thereto review those case files?

A Yes, I did.

Q Was there any surveillance photography available?

A Yes, there was.

MR. THAU: May we have a date?

Q I will direct your attention to March 12, 1976.

Did you arrest the defendants, James Green and Debra Green, on that date?

A Yes, sir, I did.

Q Prior to that time, had you available to yourself and the detectives working with you any bank surveillance photography?

A Yes, we had.

In particular did you have a photograph from the First National City Bank?

A I had a photograph from a First National City Bank.

Q Do you have that with you?

A Yes, I have.

Q Would you produce it, please?

MR. REILLY: I will mark this as H-25 for identification, a photograph.

(Government's Exhibit H-25 was marked for identification.)

Q Where did you obtain this photograph, H-25, from?

A This photograph was submitted to our office from the FBI's office who retrieved the photographs from the bank robberies, develops them and distributes them.

Q As of March 12, 1976 had you been able to identify by name the two suspects in these five bank robberies?

A Yes, they were identified.

Q What were their names?

A They were identified as- Mr. and Mrs. Green.

Q What to your knowledge was the source of that identification?

A The source was from New Jersey, as I recall.

Q Did you have any mug shots of Mr. Green available to you?

A There were mug shots available.

Q Were you on duty on March 12, 1976?

A Yes, I was.

Q What were you doing that day?

A It was a regular day. We do bank robbery patrol. This particular day we had specified looking for the subjects in question, Mr. and Mrs. Green. A group from our office and the FBI's office maintained observations and surveillances in the midtown area in the hopes of apprehending these two suspects.

Q Where did you conduct this surveillance in the midtown area exactly?

A It was my partner and I was on Broadway. We were on Broadway in a department car facing south between 53rd Street and 54th Street.

Q Why had you selected that area?

A That area is more or less zoned for banks, several banks in that general location, and from our location we could observe certain banks and personnel and customers going in and out.

Q Did you have this exhibit with you, H-25 for identification?

A Yes, we did.

Q Did there come a time when you saw somebody who resembled the two individuals pictured in that photograph?

A Yes, there came a time.

Q Tell me exactly what happened?

A It was approximately 2.30, 2.40 and we were in

the car facing south. Mr. Green looked me in the eye as he passed the car and I turned away because I assumed that he recognized it as being a department car.

51 THE COURT: Was the car marked in any way?

THE WITNESS: It is an unmarked police car. Miss Green, to my knowledge, did not recognize us.

Q Did you observe Mr. Green and Mrs. Green prior to Mr. Green looking you in the eye?

A Yes, I did.

Q Did you recognize them as being the people in the photograph?

A Yes, I did.

Q Did you have any difficulty in making them out?

A None whatsoever.

Q Does that include Mrs. Green as well?

A That is correct.

Q After he looked you in the eye and you looked away, what happened?

A He continued north on Broadway. My partner exited the car into the street, which would be in the flow of traffic. I then turned around and observed Mr. Green looking back. At this point I exited the car and now I

am on the sidewalk. I followed him. He continued to look back, but I didn't make myself conspicuous.

As I approached the corner of 54th Street I announced myself. He immediately threw his hands up. Mrs. Green dropped her bag. At that time my partner had circled them and they were now between the two of us.

Q After they did that, what happened?

A We asked them to come against the wall, which they did. I asked Mr. Green if he was carrying anything. He said, "Yes."

Q I said, "Where?"

He said, "In the left side of my pants."

Detective Segree raised his coat jacket and removed a small revolver.

Q Do you know whether there were any rounds in that revolver?

A There were rounds in that revolver.

Q With respect to the handbag that fell to the sidewalk, what happened to that?

A That was retrieved and that was taken with Mr. and Mrs. Green to the station house.

Q Did you inspect the contents of that bag?

A Yes, I did.

Q Did you find a note from the Chemical Bank in

there?

A Yes, I did.

Q Was there anything written on the note?

A There was a message. I don't recall exactly right now the note.

Q To your recollection did it have anything to do with a holdup?

A Yes, sir, it did.

Q At any time did you or Detective Segree advise the defendants of his or her constitutional rights?

A Yes, Detective Segree did advise them of their constitutional rights.

Q When and where?

A In the car on the way to the station house.

THE COURT: This, of course, was after the search and the taking from Mr. Green of the small revolver and the finding of the note in the bag; is that correct?

THE WITNESS: No. The arrest was made. We announced "Police; you are under arrest," and we stated "For bank robbery."

THE COURT: You made the arrest?

THE WITNESS: That is correct.

THE COURT: And he put up his hands; she dropped her bag?

THE WITNESS: That is correct.

THE COURT: Then you proceeded up against the wall and a search was made; is that correct?

THE WITNESS: A superficial search for weapons only was made then. There was no search -- I asked Mr. Green was he carrying a weapon and he stated yes. I asked him where and that is what was removed. There was no official search conducted. A crowd had started to collect and we thought in the best interests of everyone we would remove ourselves from the streets.

THE COURT: When did you look in the bag?

THE WITNESS: At the station house.

THE COURT: The station house?

THE WITNESS: That is correct.

THE COURT: That was after you advised them of their rights?

THE WITNESS: That is correct.

Q Do you know whether there is a Chemical Bank near the corner of Broadway and 54th Street?

A Yes, there is nearby. It is just north of 54th Street.

Q Did you have an opportunity to observe Mr. Green and Mrs. Green when you were arresting them when you took them back to the station house and at the

precinct?

A Mrs. Green was with me most --

Q Mrs. Green?

A Yes.

Q Just going back, did you have an opportunity to observe Mr. Green at any time?

A Yes, in the car. We took him back to the station house. Once in the station house they were separated. I remained with Mrs. Green and he was questioned at another location.

Q Have you in your duties as a police officer and in particular in the course of your duties as an undercover detective doing narcotics work had the occasion to observe drug addicts while under the influence of drugs?

A Yes.

THE COURT: You were on the Narcotics Squad, were you?

THE WITNESS: I was in the Narcotics Squad for seven years.

Q And had you occasion to observe certain symptoms of individuals when they are under the influence of drugs?

A Yes, many occasions.

Q Did you notice whether Mr. Green was exhibiting

any of those symptoms at the time of his arrest?

A I don't recall him acting as if he were under any need or had just, perhaps, had any drugs. He appeared rather normal and so did Mrs. Green.

Q Did you observe any withdrawal symptoms?

A None.

Q With respect to Mrs. Green, what did you observe, if anything?

A She was very relaxed. She was friendly.

MR. REILLY: No further questions, your Honor.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Tell me, Detective, if the defendants had taken any shot of heroin approximately two hours before your arrest of them, in your experience would they have gone into what is called a nod in the intervening two hours and then come out of it?

A It would depend on the degree of the heroin taken, perhaps.

Q Now, are there periods after they take the heroin where they appear normal and then they nod and then they appear normal again; isn't that sort of a wavy effect depending on the quantity they take and how long before they have taken it?

A It can have its effects. It does have its effects, but during the time that I spent with Mrs. Green, and I spent most of the time with Mrs. Green, I did not detect her in any state of withdrawal or high. She was very calm. She was very patient.

32 Q Did you observe Mr. Green during this entire period?

A No, I did not observe Mr. Green during the whole entire period.

Q Was there any request by the defendants for medication at any time?

A Not to me.

Q Not to you?

A No, sir.

Q Let me ask you this:

Were you present when Mrs. Green was questioned?

A Mrs. Green was not questioned, let's say, thoroughly. A statement was made in the cab or in the transportation when we took them up in another department vehicle from the location that he would do all the talking. This was the statement to Mrs. Green from Mr. Green, that he would do all the talking. So, when there was questions to Mrs. Green there was no real answers. There were just smiles.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Detective, do you carry a memo book?

A Yes, I do.

Q Do you have it with you?

A For that day?

Q Please?

A Yes, I have.

Q Would you please turn to the appropriate page? May I see it? Show me where the entries concerning this case were written.

A Here it is.

Q 12.20.

MR. THAU: May I confer with the detective for an instant?

THE COURT: You may.

(Pause.)

Q On page 10 is the only entry you have in this memo book concerning this case; is that correct?

A Yes, that is correct.

Q Did you file such forms as New York City Police Department Form DE-5, UF-61?

A A UF-61, Counsel, is a report made by a com-

plainant.

Q How about a DE-5?

A A DE-5 I made as to the arrest.

Q Is this a copy of the DE-5? I show you a document given me by Mr. Reilly.

A That is an "Unusual."

Q An "Unusual"? Do you have your DE-5?

A Yes, I have.

Q May I see it, please?

A Yes.

Q Now, Debra Green never made a statement to you incriminating herself in any of these bank robberies, did she?

A I asked her was that in the photo. Not ask her. I says --it was a general conversation about her and her husband. I says, "Why are you committing bank robberies with your husband?" and she smiled.

I said, "Didn't you know you would be on camera?" and she smiled.

Q Was that the sum total of the response to your questions? Is that right?

A Yes. Yes, she smiled most of the time.

Q She was in, basically, a friendly, cooperative mood and she was a smiling lady to begin with?

A That is what I encountered.

Q In your DE-5 when you say that statements were made incriminating themselves in the bank robberies, do I take it the statement you described to be that of Debra Green was her smile?

A No, this is a conglomeration of facts from the Federal authorities. They were removed from the Midtown North Precinct to the 69th Street headquarters at which time they were questioned by -- and then we conferred.

Q But the DE-5 you just showed me reflects such personal knowledge as you have of what this woman Debra Green may have told you or may not or you may have overheard?

MR. REILLY: Objection to the form.

A The photos spoke for themselves.

THE COURT: I'll let it stand.

A The photos spoke for themselves. They were an identification --

Q So Mrs. Green smiled and Mr. Green spoke; is that right?

A The defendant was advised that Mr. Green was to do the talking.

Q You told Mr. Reilly or maybe Mr. Mitchell that you had had two identified suspects?

A I stand corrected there. They were identified at the time as Mr. and Mrs. Green. There was a warrant for Mr. Green. I stand corrected.

Q For Mr. Green, right?

A As I recall.

Q That is the present state of your recollection, that there was a warrant only for Mr. Green; is that right?

A If I recall correctly, the warrant was for Mr. Green, but it was stated through information received that it was Mr. and Mrs. Green, the persons who were being -- the crimes which were being investigated and the persons in question were Mr. and Mrs. Green.

Q But the warrant was only for Mr. Green; is that right?

A I didn't see the warrant. This is through conferences.

Q So do I take it that -- this was March 12?

A March 12.

Q Do I take it that on March 12 you had never seen a warrant for either one of these defendants; right?

A The New York City Police Department did not take out a warrant.

Q And your only information was that there was a warrant and that warrant was for James?

A That warrant was for Mr. Green.

Q And it was also the state of your information at that time that his wife was suspected of having committed crimes with him?

A That is correct.

Q But you had no knowledge that a warrant had ever been issued for her by any Court?

A I was not executing a warrant.

MR. REILLY: Objection.

Q I understand. I'm not asking you that.

MR. REILLY: Objection as irrelevant.

THE COURT: I'm going to let him inquire. I want to give him every latitude here.

MR. THAU: Thank you, your Honor.

Q Detective, I did not ask you whether you were executing a warrant, but simply whether, as far as you knew, there was any warrant in existence against Debra Green?

A I'm not certain.

Q You didn't know of one?

A I didn't know of one.

Q You certainly have never seen this woman rob a

bank; right?

A I did not see her rob a bank.

Q Is that right?

A You are correct, sir.

Q And she was walking south on Broadway there was nothing --

A North.

Q North, thank you -- there was nothing about what she saw then doing which suggested to you that she was committing a crime in your presence; is that right?

A A crime had been committed.

Q I didn't ask you that.

There was nothing about walking on Broadway that suggested to you that a crime was being committed in your presence?

THE COURT: How about was about to be committed? She didn't see a bank robbery in progress, and I think the cases would support that she must reasonably suspect that either a crime has or is to be committed.

53 Q I'll get to that.

None was being committed in your presence?

A Not at that moment.

Q And this lady was not in visible possession of

a weapon or of what you knew to be contraband of any sort; right?

A Not at that moment.

Q Nor was her companion, for that matter?

A Not visible, sir.

Q Detective, had you spoken to any of the bank tellers who had been subjected to these bank robberies for which these two defendants were suspected?

A I would have to review the case folder.

Q Why don't you rely on your independent recollection for the time being and if that is exhausted perhaps the Court will permit you to look at your file.

Did you, Detective, ever speak to any of these tellers of the banks involved in this case?

A I'm not positively sure, Counsel, and I'll explain that. I deal with so many tellers.

Q Now, this photo, H-25, you had it with you at that time; right?

A That was in our car.

Q Looking at that photo again, does that refresh your recollection whether at any time prior to the date of arrest you had gone into a bank and displayed that photo?

A No, I did not. I never did.

Q You never did?

A I never did. No, I did not.

Q Was a duplicate of that photo, another copy of it, ever shown you by a bank person with who m you discussed the robbery?

A No.

Q Where did you get that photo -- from the FBI?

A That is correct.

Q And did the agent who gave you that photo at the time he gave you the photo tell you what this photo proposed to depict in terms of cite, in terms of date, in terms of which 12 or so people on the photo were of interest to you?

A This photo, among others, I delivered to our office and with it are certain papers or other paraphernalia that would go with a particular case. Th is is not a direct transaction between myself and the FBI agent, and there are several photos that are brought. They are distributed among our personnel to keep with them on their person for when they are out making observations.

Q Do I take it, therefore, that you came ino personal possesion of this photo not from an FBI agent but from someone in the New York City Police Department?

A Not directly from the FBI.

Q That is what I said.

A But through the mail from one of our personnel.

Q You have a very short, sort of thick file, sitting in front of you from which you took the DE-5. Do you have in that file those papers which accompanied that photo, H-25, when you received it through the mail?

A It might not have been inserted into the case folder, but I have a copy of a report that accompanied them. Perhaps the officer did not encompass it, but perhaps the officer -- it might have been displayed. I can show you a copy.

Q On March 12, when you had this photo in your car, did you have accompanying the photo the documentation which you can't locate?

A No, I just -- I had the pictures.

Q When you placed these people under arrest do you know for what you were placing them under arrest?

A Yes.

Q For what?

A Bank robbery and attempted bank robbery.

Q Which specific bank robbery?

A There were five in question.

Q When you place someone under arrest it is your duty, is it not, to advise them specifically of what you are arresting them for?

A Bank robbery at that time.

Q Don't you say "Bank robbery, January 1st, Franklin National Nation," or some such thing?

A At that moment we did not.

Q Just bank robbery?

A When the crowd started to gather we moved them in at that time.

Q Did you yourself at that time know whether anyone had ever identified the female or one of females on this photo, H-25, as someone who robbed a bank?

A I'm not certain if a teller had identified --

Q Certainly no such teller had ever identified that woman to you?

A Not to me.

Q Is it fair to say that you got this photo in the mail together with other documents and basically you and your partner were told "Pick up these two young people on sight"?

That is basically what happened here; isn't that right?

A No.

Q It isn't?

A No.

Q You never spoke directly to an FBI agent before

the arrest; is that right?

A Oh, yes, we did. We were --

Q About these two?

A Yes, but of course about those two.

Q To whom did you speak?

A There were several officers. Eddie Roach -- I just can't recall the names, but this conversation and discussing the case, there were certain officers.

Q Did either Mr. Roach or any of his partners point to this woman in the lower left-hand corner of H-25 and tell you "This woman has been identified to me by someone as a bank robber"? Did Eddie Roach ever tell you this?

A I was told. I won't say specifically it was FBI Agent Roach, but I'll say that they told me that a person who we were looking for is Mrs. Green.

Q Looking for?

How many times have you been a witness in your career?

A Oh, several.

Q I'm sorry?

A Several, many, many times.

Q So that what you were told is that the law was looking for the woman; is that right?

A That this person had perpetrated a bank robbery and that it is a felony and --

Q You were told that is a felony?

A It is a felony.

Q I know, but you, a trained, experienced detective were told that it is a felony.

A No, no, I'm telling you that it is a felony.

Q I know it is a felony. I've studied.

A I'm just trying to clarify.

Q Thank you. I'm interested in what you were told.

A I was given a description of the person, the defendants or the persons in question. We discussed the bank robberies in question, February 25, February 25, I think it was, February 27, March 5, March 8th, and what-have-you. We discussed them.

Q That was with the FBI agent?

A FBI agents and members from our squad.

54 THE COURT: And yours is the Major Case Squad?

THE WITNESS: Yes.

THE COURT: That means big cases?

THE WITNESS: Heavy cases.

THE COURT: Heavy cases. All right.

Q Did this woman ask you "When am I supposed to

have robbed a bank"?

A No.

Q Had she asked you that would you have been equipped to tell her right there and then?

A Yes.

Q Which bank?

A There were attempts made on February 25. There was another job done that same day.

Q Yes?

A February 25.

Q Were you shown photos for both these jobs?

A The description at that time.

Q Fitted her perfectly; is that right?

A Fitted the defendant.

THE COURT: Which defendant?

THE WITNESS: Mrs. Green, speaking of Mrs. Green.

Isn't that the question you asked?

MR. THAU: Yes, on February 25.

Q The description fitted her perfectly; is that right?

A The February 25 description says she was female, black, she was about 23, she was five feet five and about 130 pounds.

Q Was there anything particularly distinguishing about that description?

A That is prior to the photos. The photos substantiate --

Q How many photos have you got?

A The photo that you have here -- there is the one of Mrs. Green.

Q That is the only photo you have?

A Of Mrs. Green.

Q Yes.

Did you know at that time which of these jobs this photo depicts?

A It was the First National City, but I don't recall which branch. There was two jobs at the First National City.

Q The photo itself, looking at it, doesn't show anybody near a teller, does it?

A No.

Q It doesn't show either one of these defendants near a teller; right?

A No. It shows -- what the picture depicts is someone on line.

Q That is right.

A Approaching a teller's station.

Q You don't even see a teller's station; you don't know --

A I say what it depicts. That is what you asked.

Q You don't know from looking at the picture that these people are at teller's stations. From all you know they may be approaching a door; is that right?

A Leaving a bank.

Q There is nothing about this photo that shows there is a crime in progress as the photo is being taken; is that right?

A Repeat that, sir.

Q There is nothing about that photo which suggests that a crime is in progress as the photo is being taken?

A It shows that the persons in question was at that location.

Q That is right.

You told us before that Mrs. Green was a person the law was looking for. Those are the words that you used "looking for."

A We were looking for her or we were looking for the person in that photo.

THE COURT: Person or persons?

THE WITNESS: He is speaking of Mrs. Green I

believe now. It is persons.

THE COURT: The female?

THE WITNESS: The female in that photo.

Q The black female, because there are countless females?

A The black female with the rabbit type coat.

Q Is that the little black coat, the rabbit coat in the distance?

A I'll show you if you like.

Q Were you told that you were looking for them or were you told that if you should see both or either one of them you should actually arrest them?

A I wasn't told that. I knew to do that.

Q You knew to do that because the law was looking for them; right?

A Becasue crimes were committed and their descriptions were fitting to a crime.

Q What personal knowledge had you that Debra Green had committed any of the crimes you told us about before?

MR. REILLY: I object, your Honor, to that as being irrelevant on the issue of probable cause to arrest for a felony that has been committed and for which the witness has testified that she has case files and the

documents.

MR. THAU: Your Honor, the case file --

THE COURT: Overruled.

Q What personal knowledge did you have?

A Personal knowledge is that a bank was robbed. The person fitting that description is on that photo which you have in your possession.

Q Yes.

A The person I saw on the street that day was the person on that photo, which is the person in this courtroom.

Q Who told you, No. 1, which specific date this photo depicts and that a specific person on that photo committed the crime?

A I couldn't give you a name specifically. It was a member of our squad in conjunction with the FBI agents.

Q With respect to the descriptions, would it be fair to say --

THE COURT: You indicated something on your direct examination, Detective Palmer about the defendants having been identified as Mr. and Mrs. Green and something about the source having been New Jersey.

THE WITNESS: Yes, this was through Jersey in

contact with the FBI office.

THE COURT: Was that where you got the information that Mrs. Green was a suspect in a bank robbery?

THE WITNESS: That is where it was transferred on to me from the New Jersey aruthorities, from the FBI to our office.

Q Is it fair to say that you were not instructed by anyone to arrest Debra Greew but you took it upon yourself to arrest her based on your knowledge that the law as looking for her; is that a fair statement?

A No, sir.

MR. REILLY: I object to Mr. Thau's constantly using the phrase "the law was looking for her."

THE COURT: Sustained.

MR. THAU: The witness used the word "looking, we were looking for her."

MR. REILLY: She said, "We were looking for a person who committed a bank robbery, one of five."

MR. THAU: I'm adopting the language of the officer.

THE COURT: If the officer can answer the question I will permit her to do so.

THE WITNESS: Would you repeat the question?

Q Do I take it that based on your knowledge that

the law was looking for Debra Green you took it upon yourself to arrest her when you saw her?

A The law is me, if you wish to be so emphatic.

Q That is right.

A And based upon the investigation we were looking for Mrs. Green and Mr. Green.

Q No one had instructed you to arrest her, however, if you should come upon her; is that right?

A I don't need instructions to effect an arrest, Counselor.

Q Even though there was no arrest warrang and even though she wasn't committing a crime in your presence; is that right?

A That is correct.

Q In speaking about her fitting the description, at the time of her arrest she wasn't wearing a rabbit coat such as is in this picture?

A That is right, no.

Q Would you agree with me as you sit there that as you walk the streets of our city likely as not you will come across a woman who answered the description in the reports like every single block; right?

A No.

Q No young black women in their 20's?

A That fits the description in that photo, no.

Q The first thing you asked James Green after you detained him was whether he had anything on him; right?

A Right.

Q The very first thing?

A That is the very first thing I asked him.

Q And you elicited a statement from him in response to your question?

A No, I was protecting myself.

Q I am asking you whether you elicited a statement from him, that he said, "Yes, in my pocket"?

A He answered the question.

Q That is right. And you did not advise him --

THE COURT: At that point was he up against the wall?

THE WITNESS: He was against the wall, yes, against --

Q Literally and figuratively?

A He was, Counselor, under --

Q Yes, I understand.

And Debra Green dropped her bag; is that right?

A That is correct.

Q Did either you or your partner seize the bag?

A Yes.

Q So do I understand correctly that the principal purpose of a search of a defendant after you place him or her under arrest is to detect the presence of weapons to safeguard yourself?

A That is correct.

Q Who picked up the bag, you or your male partner?

A I did.

Q Did you draw your weapon?

A I had my weapon out when I encountered Mr. Green.

Q Did you have a chance to handcuff Mrs. Green before you took her to the station?

A That is correct.

Q And you still had her pocketbook in your possession?

A Yes.

Q Had you procured a warrant for the search of her pocketbook?

A No.

MR. REILLY: Objection. I assume that Mr. Thau read the case reports. He knows very well that that is not required, not a requirement.

Q I'm asking whether she did, not whether it is required?

A I did not.

Q There was no danger once you had seized the bag that she would retrieve a weapon from it and injure you and your partner?

A That is true.

Q Nevertheless, you took it upon yourself to search that bag?

A No, sir.

Q You didn't search the bag?

A Not then, sir.

Q That is right, you searched it at the police station?

A That is correct, sir.

MR. REILLY: I object, your Honor, as being irrelevant. The Supreme Court has held that a search incident to arrest is perfectly proper.

MR. THAU: Yes, for a search incident to an arrest. It is designed to protect the officer from injury at the hands of a prisoner who may have a concealed weapon. You are dealing with a frail woman.

THE COURT: It is not necessary to argue the point now, gentlemen. I'll deal with the matter when it

comes to a decision on the motion.

Anything further, Mr. Thau?

MR. THAU: Just very quickly, your Honor.

Q Did you empty her pocketbook, Debra's pocketbook?

A In the station house, Counsel?

Q Yes.

A Yes, with her present.

Q Did you retrieve any weapon from it?

A No, sir.

Q You seized nothing from it which was either proceeds of the robberies or a weapon of any sort?

A There was a note in the bag.

Q That doesn't fit within the description of the proceeds, does it?

THE COURT: I will take it that she did not obtain from the bag a weapon or the proceeds of any robbery.

Q And you went about reading every last bit of scrap of paper that may have been in that pocketbook?

A Just maybe four or five pieces of little scrap paper. There was nothing in her bag but a scarf she had, a scarf, and that was it.

Q And you opened every scrap of paper to see

what was written on all these scrap papers?

A That particular paper in question was not balled up. It was visible. It was open, an open piece of paper.

Q Opened flat?

A It was a piece of paper, but it wasn't balled up.

Q I understand that was opened flat so that you could read it all as it was laying there on the table?

A Yes, you could read it when it fell out on the table. I didn't go into the bag. i emptied the bag.

MR. THAU: Thank you.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Was it you or your brother officer that first searched Mr. Green?

A Oh, my partner. He went and got the weapon. He removed the weapon.

Q He went over and he searched him; is that right?

A He removed the weapon, Counsel.

Q Didn't he search him first, before he removed the weapon?

THE COURT: Let's ask this: Did he pat him

down?

Q Did he pat him down after he was up against the wall, your partner?

A He might have.

Q Then did he say to him, he, not you, did he say to him, "Have you got a weapon"?

A No, sir.

Q It was you who said it?

A That is correct.

Q After your partner had patted him down?

A I asked him as he was just against the wall -- that was the first question out of my mouth when we had them under control, Counsel, "Are you carrying anything?"

He says, "Yes, in my" --

Q You mean your brother officer didn't search him first? Just answer that yes or no. If you don't remember, say so.

A "First" meaning what?

MR. REILLY: Just try to calm down. I think there is no reason for that.

THE WITNESS: Repeat the question, Counsel.

THE COURT: Mr. Reporter, would you repeat the question.

(Question read.)

A Prior to me asking him was he carrying a weapon?

56 Q Yes.

A No, I do not recall him -- he was -- no, he did not. He was standing --

Q He didn't?

A No, not that I recall.

Q You are positive of that, madam, or just guessing now?

A I'm not guessing. I can relive the incident.

Q Don't relive the incident, just answer.

A Let me put it in perspective.

I asked the question "Are you carrying anything?"

Q Answer my question?

A That is what I asked your defendant. He said, "Yes" --

Q Would you please answer my question?

Did your brother officer search Mr. Green before you asked him the question?

A No.

Q Just yes or no.

A Not that I recall, no.

Q Did your brother officer take the gun from him?

A Yes, sir.

Q And who was watching the female?

A I was.

Q In other words, you walked away?

A No, sir, they were standing parallel.

Q Parallel, both of them against the wall?

A Yes, facing away from the street, facing the --

Q Both of them both against the wall?

A Yes, standing side by side.

Q Had you retrieved the bag?

A Yes.

Q Let me get this in sequence. The two of them are up against the wall?

A It is easier for me to enlighten you, but go ahead.

Q You answer my questions.

The two of them are up against the wall; right?

A That is correct.

Q Does anybody do a body frisk of the male defendant; just yes or no?

A I would say yes.

Q Who body frisked him?

A My partner.

Q Then your partner, having found nothing, who

asked him whether he had a gun?

A I --

MR. REILLY: Objection to the form of that question.

THE COURT: Let the witness explain.

MR. REILLY: No foundation.

THE COURT: The witness can explain.

A Are you ready, Counsel?

Q They're up against the wall; right?

A Yes.

Q Your partner does a body frisk of James Green; is that correct?

A After I asked him --

Q I'm asking you?

A He did conduct a superficial frisk.

Q Then did you ask him about the gun or was it before that?

A Before that, Counselor.

THE COURT: In other words, as I recall your testimony you approached the Greens and Mr. Green put up his hands?

THE WITNESS: That is correct.

THE COURT: And so far at that point no one, neither your partner nor yourself touched him?

THE WITNESS: That is correct.

THE COURT: He was made to move over against the wall or the rail; is that correct?

THE WITNESS: That is correct.

THE COURT: Which came first, someone touching him or someone speaking to him?

THE WITNESS: Someone speaking to him?

THE COURT: Who spoke to him and, if so, what was said?

THE WITNESS: I'll explain. As they moved against the wall Debra had dropped her bag. I seized her bag and moved her against the wall, staying with them to the wall. With my eyes on them -- they are not in handcuffs or anything at this point -- I'm retriving the bag. They are against the wall. His hands -- both their hands are up. I immediately ask, "Are you carrying anything?"

He says, "Yes."

I said, "Where?"

He said it was in the left side in his trousers. My partner pulled his jacket and removed a small weapon.

Q Then did your partner frisk him?

A He superficially reached here for Debra to

make sure she was not carrying anything.

Q Did your partner frisk the male defendant after the gun was removed?

A That is correct.

MR. MITCHELL: That is all I wanted to know. I have no further questions.

THE COURT: Any further questions?

MR. THAU: No, your Honor, but may it be clear on stipulation that as to photograph H-25 it is of the March 5, First National City Bank incident?

THE COURT: Is it not identical to an exhibit already received in evidence?

MR. MITCHELL: It is a sequence later.

THE COURT: It is a sequence later.

MR. REILLY: That is correct, your Honor.

THE COURT: Then that would be a sequence later than Hearing Exhibit --

MR. REILLY: I believe it is H-18, your Honor, a surveillance photo from the First National City Bank.

THE COURT: Yes. Very well, so it is a sequence later than H-18. I have it.

MR. THAU: Your Honor, also I would like the Court to incorporate such part of the evidence as was heard on the Wade issue as has a bearing on the suppression

and I am particularly saying that because you will recall regarding that particular incident the victim teller was Miss Lily Yu who never identified my client and who said she was incapable of doing so.

On my summation in this proceeding I think I will have very much to say on any probable cause, if any there was.

THE COURT: Let me cut you short by stating that the photo in question was taken on March 5, 1976, about a week before the apprehension of a "boy and girl" who robbed that bank and under the circumstances, you can talk all you want, but I do want to make note that this photograph was taken during a bank robbery. True the teller in question could not recognize the male and female who perpetrated the robbery and could not identify them. I recognize that. At the same time we know a robbery took place at that bank at that time and a surveillance photograph was taken and I am dealing in this hearing with a probable cause which can be both direct and circumstantial proof.

I'll hear from you later, but let's finish with this witness first.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did you have a listing of the five banks that were subject to the armed robbery?

A Yes, I did, sir.

Q Are they in your case file that you have today?

A Yes.

MR. MITCHELL: We will state that they are in the case report.

MR. REILLY: It is stipulated that the five bank robberies are as included in 3526, including the First National City Bank, 40 West 57th Street, case No. 94, on the Major Case Squad docket.

No further questions, your Honor.

57 RECROSS EXAMINATION

BY MR. THAU:

Q You had a list of banks other than the one depicted in photo H-25; right?

A I had a list of all the banks for which the persons --

Q But you had no photos other than H-25?

A There were other photos.

Q You had no photos other than H-25?

A Than the one that was submitted to you today?

Q Yes.

A This (indicating).

Q Did you have that in the car?

A I had this photo also.

Q That photo doesn't depict Debra, does it?

A That has a lone photo.

Q Of James?

A Of James.

Q You had no other photos of Debra?

A I had that one. My partner might have.

Q Might have?

A Might have had another photo, because we carry out own.

MR. THAU: Thank you.

THE COURT: Anything further of Detective Palmer?

MR. REILLY: No, your Honor.

THE COURT: You are excused. Thank you very much.

(Witness excused.)

MR. REILLY: The Government has no further witnesses on either of these hearings, your Honor.

MR. MITCHELL: Just on the search itself of the defendant I would have the defendant James Green.

THE COURT: You may call him now.

Will there be any further evidence offered by either side?

MR. THAU: Nothing, your Honor.

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JAMES MELVIN GREEN, a defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Talk loud and slow so that I can hear you back here and in that way everybody will hear you.

Tell me, Mr. Green, on March 12, 1976, some time before you were arrested, had you used any drugs?

A Yes, I have.

Q About what time had you used the drugs and what did you use?

A Approximately 12, a quarter to 12, 12 o'clock and the drug that I used was heroin and cocaine together.

Q How did you use the heroin and cocaine?

A I mixed it together, then I shot it. In other words, I put it in my veins.

Q In your vein?

A In my vein.

Q Do you recall the time of your arrest?

A Yes, I do.

Q At that time were you under the influence of this combination of heroin and cocaine?

A Yes, I was.

Q And subsequent thereto do you recall being interviewed by an FBI agent, Mr. Roach, in the station house?

A Yes, I was.

Q At that time was there any discussion between you and Mr. Roach about you getting some sort of drugs or medical aid?

A Yes. He told me, the Special Agent Roach told me that he knew that there is a lot of confusion between the officers in there keep coming after me, ask different questions, trying to make me confess to this and that. He told me that I wouldn't have to go through that; that he would get me out of there if I would make a written statement to him.

Q As a result of his saying that he would get you out of there, did you sign anything for him?

A Yes, I signed a particular thing for him to search this particular apartment where I told them that we had been staying.

Q In whose name was the apartment?

A The apartment was in my wife's name. At that time she was using the name Amecca Mohammed.

Q It was in your wife's name?

A Yes.

Q She was the one who rented the apartment?

A Right.

Q She was the one who paid the rent for the apartment?

A Yes.

Q Did you ask for her permission to have the agent search the apartment?

A No, I didn't. We has separate rooms.

MR. MITCHELL: I have no further questions.

MR. THAU: I haven't either, your Honor.

CROSS EXAMINATION

XX BY MR. REILLY:

Q How long had you been staying at the Monterey?

A Approximately three or four days, maybe a week. I don't know. Approximately -- I do know. I think it was three days, because we had paid for to stay there about a week.

Q You say you had paid for about a week?

A Which I mean my wife.

Q You had provided some of the money?

A She took care of the business.

THE COURT: Was she working at the time?

THE WITNESS: No, she wasn't.

Q What was the source of the funds that you had?

A I refuse to answer that question.

Q Did you provide any funds to your wife to pay the bill?

A I refuse to answer that question.

Q Did there ever come a time when you were staying at this hotel that you went out by yourself and came back to the room by yourself?

A Yes, it has been.

Q Was there ever a time when you came back to the room when your wife wasn't there?

A No, it wasn't.

Q Did you have a key to the apartment?

A Yes.

Q Did you have a key when you were arrested, at the time?

A No, I didn't.

Q Did your wife have a key, to your knowledge?

A No, she didn't.

Q Is this something that you checked at the desk?

A Right, you leave the key there.

Q Did you ever pick up the key during your stay there?

A I don't understand that question.

Q Did you ever go to the desk and pick up the key and take it upstairs to open the door when you were staying at the Monterey Hotel?

A Yes, I did.

Q And the man behind the desk didn't ask you whether you had permission to have they key?

A On one occasion he did. They said they had a lot of trouble in the hotel. He wasn't sure whether I was staying there or not, so he had to call my wife or he called another fellow that was working there that knew -- that had seen me and my wife together.

Q How long had you been married?

A Approximately five years.

Q Whatever money you had, did you share it with your wife during those five years?

A Yes, I do.

Q Whatever she has, did she share it with you?

A Yes.

Q After you were arrested did you stay in the car, as the detective reported, that you would do the

talking?

A No, I didn't.

Q Have you been conferring with your wife during the course of this hearing?

MR. THAU: I believe the sole purpose for which Mr. Mitchell put his client on was on the consent search. I may be mistaken.

THE COURT: He can answer that yes or no, but I won't let him ask the next question, what they were talking about.

Repeat the question.

Q Have you been consulting with your wife during the course of this hearing?

A Pertaining to what?

THE COURT: Just answer yes or no. I am not going to let him ask you what you were talking about.

A No.

THE COURT: You haven't talked to your wife during the course of this hearing?

THE WITNESS: Not about this hearing.

THE COURT: But you conferred, you talked to her?

THE WITNESS: Yes, I have.

THE COURT: I am not going to let it go any

further.

Q You were arrested at 54th Street on Broadway?

A Yes, I believe so.

Q Where had you come from?

A We was coming from -- I'm not too familiar with the streets in New York. All I know, we was on Broaday and we were going to the apartment where we was staying.

Q You had come from the Montery Hotel?

A No, we was going to the Montery.

Q You were going to a different hotel?

THE COURT: No, he was going to the apartment where they were staying and which the court takes to be the Montery Hotel on 94th Street.

Right?

THE WITNESS: Yes, sir.

Q Where were you coming from?

A We was coming from 34th Street.

Q Was there a particular location that you had been visiting there?

A No, we had just came from New Jersey.

Q What time did you leave New Jersey?

A I couldn't really say.

Q Did you come by automobile or by bus?

A By train.

Q How far out in New Jersey was this?

A Newark.

Q Did you walk up from Penn Station?

A Yes, we did.

Q You were walking from 34th Street on to where you were eventually arrested; is that correct?

A Right.

Q Where was it that you had this fix that you described?

A We had this in the course of our coming into Penn Station. We had had it on us before we went to Jersey and in Penn Station, that is where we approximately took the fix.

Q In Penn Station?

A In the Penn Station.

Q Where in Penn Station?

A In the bathroom.

Q You were alone?

A Yes.

Q Did you go anywhere from the bathroom, the location of the bathroom? Where did you go when you left the bathroom?

A Straight outside.

Q And you didn't have any trouble walking up the

street, did you?

A No, I didn't.

Q And you walked all the way from 34th Street to 54th Street; is that correct?

A Yes.

Q Did there come a time when you were stopped by the police?

A We wasn't exactly stopped. As this officer that was here on the stand before me testified, her brother officer came in the middle of the street behind -- a bus coming down this way and he was coming up this way, came directly at us, at my wife with a gun. Automatically she threw her pocketbook. This is why she threw the pocketbook. Both of us put our hands up in the air. He searched me and --

Q Did you notice him right away?

THE COURT: Let him finish.

A He searched me, didn't find anything on me, and then searched me again, asked me where was it, and I said, "It is right here on this side," and that was it. It wasn't the lady. She didn't have anything to say to me except when they put us in the car approximately two or three blocks, I said to them did I have any rights and the fellow, that is the officer says, "Oh, yes, you

a right to remain silent," and so forth, and that is exactly what I did.

Q Do you have a clear recollection of exactly what went on from the first time the male officer approached you?

A Yes. Right from the first time I seen him coming from behind the bus, I have a very clear recollection of that.

Q You knew exactly what was going on?

A I didn't know what was going on. I didn't know he was an officer. He didn't show me no badge. All I saw was the gun which looked to be a 38 or a 45.

MR. REILLY: No further questions, your Honor.

MR. MITCHELL: No questions.

MR. THAU: No questions.

THE COURT: You may step down, Mr. Green.

(Witness excused.)

THE COURT: Now, do the defendants have any further witnesses they wish to call or any further evidence in connection with the suppression hearing?

MR. THAU: Not Debra Green, your Honor.

THE COURT: Mr. Mitchell?

MR. MITCHELL: On the question of the legality

of the search, first of all, I would say that the Government has not established that the room was not the exclusive property of Debra Green who hadn't given permission. It is from the omission of the evidence that they could have gotten the registration. We haven't got the burden at this time. The burden shifts to the Government.

Second of all, this is not a search. According to Agent Roach who said to him, "Where is the money?" I'm primarily concerned with the money. I'm only concerned with the money."

And he said, "We ahven't got it." And he said to him, "Can we search your apartment," or words to that effect in order to make a search for the money?

Then, again, there is a gap in the evidence. We don't know what the search was to cover. If they had gone for a search warrant, your Honor, they certainly couldn't have searched for more than the money or possibly a weapon. They could not have known what was in the apartment. There was no informant, nobody telling them that, so when they went there and they took every bit of clothing in the apartment, except what the other young people took, I think they made an excessive search and I think that your Honor should suppress the seizure of the

items as against the defendant and also against Debra who didn't give permission.

THE COURT: Do you wish to address yourself to the matter of probable cause?

MR. MITCHELL: No, your Honor. At this moment I'm not going to raise the issue of probable cause.

THE COURT: Mr. Thau?

MR. THAU: With respect to the house search, your Honor, I adopt the arguments just made by Mr. Mitchell and would add that this so-called consent was really secured in exchange for a promise. You recall that Agent Roach on cross-examination tried to work himself out of what he had inadvertently blurted out on direct, but my recollection of his direct testimony was that he said basically:

The precinct was a circus. There were TV people around. There was confusion. There was ruckus. It was going to take a long time to process these defendants and that he, Roach, basically said to James Green: Look, you give me a written statement, I'll get you out of here quickly by taking you under the Federal wing, so to speak.

So it was in exchange for a promise, and I think that it is axiomatic to say that in order for a statement

or the consent of any sort to be voluntary it has to be free of that sort of inducement. There are cases galore which show that the Courts look with disfavor upon the sort of bargain with a defendant that was concluded here: waive your rights and I'll do something for you.

In addition, there was untoward ruse and deception involved here on the part of Roach.

THE COURT: Let me ask the Government one question.

MR. THAU: Surely.

THE COURT: I assume they would intend to offer the coat with the long collar allegedly worn by Mr. Green.

Does the Government intend to offer any article of clothing allegedly worn by the defendant Debra Green which either appears in a photograph or has been identified by one or another of the eyewitnesses?

MR. REILLY: We would like to reserve the right to offer the handbag, large handbags and the tam, the type of large, floppy hat as has been described by a number of witnesses. Obviously it isn't a critical item, but during the course of the trial it may well become.

THE COURT: Perhaps we should defer on the determination of this until such time as the Government

firmly decides whether it wishes to offer any of this material. Then I could make a determination. It would seem at this point that the Government has not asserted positively that they intend to offer any of the clothing, and it may be that they will not, which obviously would obviate the need for any determination here.

If it would be satisfactory to both Mr. Reilly and Mr. Thau and also to Mr. Mitchell, I would suggest that I have now heard the evidence and if we get to a point where the Government wishes to offer any of the clothing, and I will say any of the clothing but I'm thinking specifically of Debra Green's clothing, they can indicate that at the side bar outside of the presence of the jury prior to making their offer and then I could rule on the matter.

MR. THAU: Very good.

In that event it goes without saying that Mr. Reilly will be barred from mentioning those items of clothing in his opening statement.

THE COURT: I would certainly think he would not mention the items of clothing in his opening statement.

MR. REILLY: Caution would dictate that.

THE COURT: On the first occasion when he intends to offer any of them he will approach the side bar

and make his offer in the first instance outside the presence of the jury and then I could hear both counsel further, if that would be agreeable to all three of you. It might be the best way to handle this particular matter.

MR. THAU: It is to me.

MR. MITCHELL: It is to me, your Honor.

MR. REILLY: And me, your Honor.

MR. THAU: I would like to address myself to the search of Debra Green's pocketbook on the day of her arrest.

THE COURT: Is it your intention to offer the note which was taken from Debra Green's pocketbook?

MR. REILLY: Unquestionably.

THE COURT: Then we will seal with that and that will be the final matter for this afternoon.

MR. THAU: Very good.

Your Honor, this arrest by the New York City police officer or two city police officers has to be placed either on a warrant of arrest on Debra Green, on a search warrant for her person and effects, or based on the crime committed in the officers's presence or, indeed, on a felony committed by this defendant to that officer's knowledge. Those are the various theories under which an officer can go into the effects, arrest the suspects

and go into that suspects effects, perhaps.

What we are dealing with is the testimony of this detective to the effect of having been supplied a picture, which we'll assume, for the moment, depicts these two defendants alonq with others.

THE COURT: A picture taken in the bank.

MR. THAU: I understand that.

THE COURT: At the time of the bank robbery.

MR. THAU: I'm getting to that.

THE COURT: All right.

MR. THAU: I'm getting to that. A picture which has some 12 to 15 people on it, two of them allegedly of these two defendants.

THE COURT: The male defendant having been identified as having been involved in other bank robberies. Assume for the moment your client was not.

MR. THAU: That is right.

THE COURT: Go ahead.

MR. THAU: If your Honor looks at this picture you will see the perfect Indian file,the male in front, the woman behind and behind the woman another woman whom no one talks about who is presumably another customer waiting on line or doing business there legally. There is nothing about the proximity of these two persons onthat picture

which even suggests that they know each other, much less that they are committing a crime together, nothing whatever.

THE COURT: Isn't the trier of the fact permitted to draw reasonable inferences and if the inferences are unreasonable should they be rejected? It would appear certainly to the eye that the people walking, as you say "in Indian file" are in immediate proxity, one to the other, with the woman walking directly behind the man.

MR. THAU: That is right.

THE COURT: And I would suggest that the inference could be drawn that they are walking together.

MR. THAU: For trial purposes, your Honor, but not for probable cause purposes.

Let's look back at what this detective who just testified said about this probable cause she had as against Debra Green. She has a picture which your Honor is now holding, H-25. She has heard scuttlebutt - it is really nothing more than that, police scuttlebutt, as I understand it, that these two people are suspected of having pulled countless bank robberies. She knows of no warrant for the arrest of Debra Green. She has never spoken to an eyewitness who has said to her "This

woman on the picture, she is one of the two who robbed me." And in that connection, in that connection, since we are dealing with the Lily Yu bank robbery, I'll remind your Honor that Lily Yu never pointed to the female in this picture and said, "She is the one who robbed the bank." She couldn't tell, and that is why she is the only witness who took the stand in these prolonged hearings about whom Mr. Reilly has apprised the Court she will not be called upon to make an eyewitness identification.

We are told that this picture occurred some time after or before a bank robbery. That is not sufficient to visit probable cause on this officer to arrest this woman. Assuming that I had been waiting on line and I had been shown to be waiting on line in that particular area, would that confer on this woman a right to arrest me? Of course it wouldn't. It is as a result of that arrest, done without probable cause, that she seized the bag and that she found its contents.

Assuming arguendo -- I'm not conceding for the moment that the arrest was based on probable cause -- but assuming arguendo that it was based on probable cause, principally a search incident to an arrest is for the protection of the officer. This female defendant, this frail female defendant was separated from her pocketbook

the moment she dropped it to the street.

THE COURT: Do you suggest the pocketbook should be given back to her unopened?

MR. THAU: No. If you are dealing with a lawful arrest and the possibility that contraband may be contained in a valise, a suitcase, a pckage of some sort, and you have probable cause to believe that that container has contraband you might apply for a warrant to search it. It may even be that you might have a right to look in it without a warrant. I'm not certain of that. But one thing is certain, that having opened this, if nothing immediately appears to be either drugs or contraband or a weapon, you don't run a general inventory exploration.

THE COURT: Mr. Thau, you should know when a woman carries a handbag which is filled with various things you don't open it and look in it. You take it and you turn it upside down and you dump the contents on a table, just as Detective Palmer did. At that point I suggest that anything could have come out of that handbag. In this case a note came out. I think that the search as it was conducted was reasonable. But you may continue.

MR. THAU: I think I'm done. I particularly press the lack of probable cause to detain that woman in

the first place. I assure your Honor this is a motion made most seriously, not pro forma.

THE COURT: I know it is.

MR. THAU: I see no basis for having arrested that woman at that point in the absence of a warrant, in the absence of this officer having spoken to some of the tellers, and particularly in view of the fact that Lily Yu was the only eyewitness to this robbery that I'm aware of and can't even identify the woman on that picture as the one who committed the robbery. I assure your Honor that had there been another young black woman standing in close proximity to James Green on that photo she would have arrested her as well. There is no doubt about it in my mind.

THE COURT: If she were not with Mr. Green walking up Broadway on the 12th of March, 1976?

MR. THAU: Assume that on that photo you had James Green in the middle and two young black people on either side of him. What would this officer have done if she had found in the company of one of them and, in the alternative, what she would have done had she found him in the company of the other. Based on the evidence she gave she would have arrested either one of these two girls. If there had been ten girls she would have

arrested all ten on the basis that they were in his general vicinity.

THE COURT: Mr. Mitchell, do you want to be heard or do you join with your co-counsel?

MR. MITCHELL: I join co-counsel's eloquent motion.

THE COURT: Very well.

Mr. Reilly?

MR. REILLY: My understanding was that Mr. Mitchell doesn't challenge the probable cause.

MR. MITCHELL: I haven't, but I will join.

THE COURT: He is joining only on the admission of the note which might be considered by the jury at such time as his client's fate is being decided.

There is no motion before me now to suppress the seizure of the gun from Mr. Green on March 12, 1976; is that right, Mr. Mitchell?

MR. MITCHELL: That is correct, your Honor.

MR. THAU: I have no standing to move. Otherwise I would.

THE COURT: You have no standing.

MR. THAU: That is what I'm saying.

THE COURT: Let me just make something very clear to everyone: I have no motion to suppress the seizure

of the gun presently before me. The only motion to suppress now pending is the motion to suppress the taking or the seizure of the note; is that correct?

MR. THAU: That is correct.

MR. MITCHELL: That is correct.

MR. THAU: It is open during trial.

THE COURT: That is the matter open for trial, the search of the apartment. I'm dealing only with the taking of the note.

You may proceed, Mr. Reilly.

MR. REILLY: The witness Nora Palmer indicated that the Major Case Squad had files on each one of these five bank robberies that the black male and female operating as a team had been implicated in, each one of them by bank tellers. They had a surveillance photograph, among others, which clearly showed an individual who bears a striking resemblance to the defendant here who Mrs. Palmer eventually saw walking down the street in the company of James Green, so that clearly there was probable cause for his arrest. The fact that Miss Lily Yu did not identify either Mr. Green or Mrs. Green is irrelevant. She established that there was a bank robbery and established generally it was by a male and female, young and black.

Also, it established that the alarm was sounded because of that bank robbery and there recorded in -- not living color, black and white, at least these two defendants, the same individuals who came walking up Broadway. She did not have that picture supplied by a bank of some of its customers waiting on line. It was a bank surveillance photograph taken during the commission of a robbery.

The Government intends to present to this jury the same evidence and it expects that this jury will return a verdict beyond a reasonable doubt of their guilt on that same evidence.

61 How could it possibly be argued that there was no probable cause there?

MR. THAU: I think that to equate what the jury might -- what they do with probable cause on the day of arrest is engaging in a bit of sophistry, with all respect to Mr. Reilly. It is not all that clear on the evidence we have heard these last two days that this photo, H-25, was taken during a robbery.

I'll call to your Honor's attention that the physical way these people are shown on the photo suggests that they are waiting on line perhaps before reaching a teller and I'm not aware that the teller testified that

she set off the camera before these people reacher her. Quite the contrary, it is my recollection that she set off the alarm after the assailants reached her window and made threatening noises suggesting strongly that it is not her setting off the alarm and the cameras that caused this picture to be taken.

So to say blithely that this photo was taken during the commission of the robbery is to speak rather loosely. Try as I might, there is no way for me to find that this woman, Mrs. Palmer, had probably cause to arrest my client. I just can't see it, and the jury may well convict my client, but if the jury convicts my client it will still not mean that Detective Palmer had probable cause.

THE COURT: The Court finds that Detective Nora Palmer and her partner had probably cause to arrest Debra Green on March 12, 1976 after Detective Palmer recognized Mr. and Mrs. Green, who were walking together on Broadway in the vicinity of 53rd to 54th Street in Manhattan from a First National City Bank surveillance photograph taken at the time of the commission of a robbery at the branch of that bank located at 40 West 57th Street in New York City on March 5, 1976, one week before the arrest.

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It has been established that at or about the time that the surveillance photograph was taken there was a robbery at that bank which was perpetrated by a "boy and girl."

The Court finds from the evidence adduced here that the photograph of the man and woman together at the bank at the time of the robbery provided probable cause sufficient to permit Detective Palmer and her partner to arrest Mrs. Green on March 12, 1976.

The Court finds that the arrest was lawful and that the search of Debra Green's handbag was valid.

The Court concludes that the seizure of the note from Mrs. Green, the note having come from her handbag, was proper.

Accordingly, the motion to suppress the note as having been illegally seized is denied.

It is so ordered.

Is there anything further?

MR. THAU: That is all.

MR. REILLY: No, your Honor.

THE COURT: Very well, Court is adjourned.

We will select the jury beginning at 10 a.m. tomorrow morning.

MR. THAU: Thank you.

(Trial adjourned until June 16, 1976, at 10.00 o'clock a.m.)

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[illegible] is a true and accurate transcription to the best of my (our) [illegible] from my (our) [illegible] proceeding.

[illegible]
Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. ROBERT J. WARD, D.J., and a Jury
vs.	
JAMES MELVIN GREEN and DEBRA FENNELL GREEN,	76 CRIM. 517
Defendants.	

U.S. DISTRICT COURT FILED SEP 21 1976 S. D. OF N. Y.

New York, June 16,17,18, 1976

STENOGRAPHER'S MINUTES

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 76 Cr. 517

JAMES MELVIN GREEN and DEBRA FENNELL GREEN, :

Defendants. :

----------x

Before: HON. ROBERT J. WARD,

District Judge, and a Jury.

New York, New York
June 16, 1976 - 2:00 p.m.

Appearances:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York,
By: J. GORMAN REILLY, Esq.,
Assistant United States Attorney.

ROBERT MITCHELL, Esq.,
Attorney for Defendant James Melvin Green.

ROLAND THAU, Esq.,
Attorney for Defendant Debra Fennell Green.

(Case called)

(A jury of twelve and three alternates was duly empaneled and sworn.)

(In open court; jury present)

THE COURT: Good afternoon, ladies and gentlemen.

We are a trifle delayed in getting started because the matter, which was unrelated to this case, which I had to deal with after you left for lunch was longer than we anticipated.

Let me, before we hear the opening statements, give you a general time table for the next day or two. We will proceed, we will take a very short break, I believe, during the coures of the afternoon, and today we will conclude at approximately 4:00 or a little thereafter because I have another matter which was set for that time.

I anticipate that tomorrow we will begin at approximately 10:00 a.m. We will take one recess of about ten minutes in the morning and take a luncheon recess at about 1:00. We will resume at 2:00 and go to something in the neighborhood of 4:30 to 5:00 p.m.

I try to get our jurors out so that they avoid the worst of the subway rush, but that is not always

possible.

That will be our schedule.

I might add that it is my practice not only to take a short break in the midmorning but the same in the midafternoon.

The temperature in this courtroom is regulated. I, as you can see, wear a robe. I am sometimes warmer than those of you who have bare shoulders. We will try to keep everyone comfortable.

There are just one or two other things that I will mention to you.

At any time, if you cannot hear what has been said, please raise your hand. I want to be sure that all of you both see and hear everything relative to the case, so if you have not hear something, if a witness drops his or her voice or speaks softly and you can't hear something, just raise your hand and we will see to it that the answer is repeated.

One last thing: I am sure none of you -- maybe one or two of you -- very few of you have photographic minds or memories. I do not permit notes to be taken during a trial.

I do indicate that, at the conclusion of the trial, should the jury in the course of its deliberations

require any testimony, if you will send out a note from your jury room, our court reporter takes down all the testimony and whatever portions of the testimony you feel are necessary can be repeated to you.

In addition, when you go to your jury room, should you want any exhibit which is received in evidence, if you will send out a note it will be sent in to you.

Please pay close attention to counsel and the witnesses.

We will hear first from Mr. Reilly, and the defendants may, if they wish, present opening statements.

MR. REILLY: Your Honor, gentlemen of the defense bar, ladies and gentlemen of the jury:

My name is Gorman Reilly. I am an Assistant United States Attorney in this district, and it is my responsibility and it is my privilege, ladies and gentlemen, to present the Government's case to you.

Seated at counsel table with me is Mr. Richard Miller. He is a law student working with our office, helping me on this case.

This is a case of armed bank robbery. The evidence will show that these two defendants, James Melvin Green and Debra Fennell Green, a man and wife, walked into three different banks in midtown Manhattan between the time

February 25 and March 8, '76, and in that short span of time committed three bank robberies.

The unusual aspect of this case is the method of operation of the two bank robbers.

In this instance we had a man and wife working together. In this instance, in each case the woman appeared at the teller's cage, she showed a note, a holdup note, and standing close by her was her husband, Mr. Green, and if there was any trouble Mr. Green stepped forward, brandished a pistol, if necessary, and demanded that the money be turned over.

On some occasions they were successful and on other occasions they were not. If the alarm went off, they immediately left the bank.

That is the case in a nutshell. It is a very simple case and it should be a very short case.

Since you were called to determine much more than that, I think you are entitled to some more details than that; however, the best place to do that, the only logical thing is the indictment which has been handed down by a grand jury sitting in this district. It is a five count indictment.

The first count charges an attempted bank robbery on February 25, 1976 at the Manufacturers Hanover Trust

Company at 1185 Avenue of the Americas. That is on the corner of 47th Street and Sixth Avenue.

The second count charges the defendants with using a gun, a dangerous weapon, to commit that bank robbery.

Count 3 charges the second bank robbery in our case, and that is at the First National City Bank, now known to some of you as City Bank. At that time the branch at 40 West 57th Street, between Fifth and Sixth Avenues, was the object of an attempted holdup by these two defendants.

Count 4 charges our third bank robbery, and that is three days later on March 8, '76. The bank involved was the National Bank of North America at 515 Seventh Avenue, which I believe is on the corner of 38th Street or near 38th Street.

Count 5 charges the use of a handgun in connection with the bank robbery at National Bank of North America.

These are the parameters of the case. We charge five counts against each of these defendants and three bank robberies.

I do not ask you to make a finding that these defendants committed bank robberies or used a handgun in

connection with any bank robbery upon the basis of what I tell you. We intend to prove this case to you, the jury, through the use of evidence, and evidence is the only thing that matters in this case.

We will present evidence in the form of eye-witness testimony, principally that of bank tellers who were the victims of these holdup attempts and the actual holdup at the National Bank of North America.

In addition, you will see bank surveillance camera photography and you will see these two defendants on camera at shortly after the bank robberies involved.

There will be other documents and there will be other circumstantial evidence which will powerfully incriminate these defendants and we are confident will lead you to believe beyond a reasonable doubt that they are guilty as charged.

It should be obvious, and I think it will soon be obvious to you from the testimony of these bank tellers, that indeed there were bank robberies or attempted bank robberies when they said do. It is difficult to imagine that a bank teller would make up something of that sort.

So, the point that the defendants most likely will labor here is the identity of the bank robbers.

THE COURT: Now, it is the function of an opening statement

to say what you intend to prove, not to rebut in advance what Mr. Reilly would do if he were a defense counsel. I think he is getting to that rapidly.

MR. REILLY: That is correct.

I am trying to focus on what I believe will be the main issue in this case that you are about to hear. Fortunately, this issue will be amply illuminated by the evidence in this record.

As I say, you will hear the actual testimony of eyewitness tellers, some of whom will be able to identify these two defendants, and perhaps one will not be able to because of the speed involved.

In addition, you will see the bank surveillance photography, and in addition there will be this circumstantial evidence which will incriminate and identify these two defendants as the individuals who walked into those three banks.

During the course of the trial, you will hear a great deal about the burden of the Government in this case. The burden is a very heavy one. We must prove beyond a reasonable doubt the guilt of these two defendants. We recognize that that is a heavy burden, but we are confident that we will meet it. We are prepared to meet it.

All of us involved in this case have a great interest in seeing that these defendants are accorded a fair trial. This is what our system of government is based upon, particularly in this bicentennial year, a source of pride to us all.

But I ask you to consider something else: I ask you to consider the fact that the Government is also entitled to a fair trial. If we have proven to your staisfaction beyond a reasonable doubt that these bank robberies took place, and that these two defendants indeed committed those bank robberies, or those attempted bank robberies, then a fair trial demands a verdict of guilty.

So long as you accord the defendants and the Government a fair trial, there is nothing else that we can ask of you, because we will be satisfied that you have exercised your function and your duty in this case.

I ask you to pay attention to the evidence, and I wish to add this one final warning:

Unfortunately you will not hear the entire case through one witness or even several witnesses, and unfortunately, because of scheduling difficulties and other reasons, we will not be able to present in a very logical manner at all times the testimony which will describe

the bank robberies.

For example, I am going to start off with my first witness, Miss Lily Uy, a bank teller at the First National City Bank, which is count 3 in this indictment.

Then we will return to Manufacturers Hanover Bank.

But I ask you to pay close attention at all times and try to remember what one witness says in connection with what other witnesses say, because you must tie these matters together before you ultimately reach your determination.

Thank you very much.

THE COURT: Thank you.

Mr. Mitchell.

MR. MITCHELL: If your Honor pleases, Mr. Reilly, madam forelady and ladies and gentlemen of the jury:

My client is Mr. Green and Mr. Green alone, and the reason I say that, as his Honor will tell you, is that guilt or innocence is individual. You have to consider the case of each defendant separately.

The district attorney has told you that the defense will be one of mistaken identity. I am not saying that the defense is essentially one of mistaken

identity. I am saying that for some reason these tellers have picked the wrong individual, and I hope to be able to convince you in each instance of each identification or nonidentification that there is a possibility of a mistake, based on the evidence itself or upon the lack of evidence.

You will have to consider each bank robbery separately and merely not say: "Well, I'm going to jumble together. I'll take part of the first robbery and part of the second robbery and part of the third robbery, and put them altogether, and therefore it would make it easier."

If on the first robbery you have a reasonable doubt under his Honor's charge, you can't convict. And the same applies to the second robbery and the same applies to the third robbery.

So I say to you you have to separate them and keep them apart.

The district attorney has mentioned a similarity. There may be a similarity in the robberies, but it does not mean that it was perpetrated by my client, and I feel sure when all of the evidence is in -- and you can't make up your mind, draw any inferences or conclusions until all the evidence is in -- his Honor will tell you

you that -- I feel sure that when all the evidence is in you will bring in a verdict, if possible, that the defendant, Mr. Green, is not guilty of the five counts charged.

One other thing. The district attorney has talked of an indictment with five counts. His Honor will tell you that the indictment is nothing but a piece of paper. You can't consider it as evidence.

What somebody has done in returning an indictment has got nothing to do with your deliberations. It is just a piece of paper with type on it and names.

And I feel sure, as I have said before, when all the evidence is in you will have either a reasonable doubt or there will be a doubt among some of you, no doubt among others, but whatever it is I feel sure that you will render a fair and just verdict to my client, Mr. Green.

THE COURT: Thank you.

Mr. Thau.

MR. THAU: Thank you,your Honor.

If it please the Court, brothers of the bar of both sides, madam forelady, ladies and gentlemen:

My name is Roland Thau. I have been assigned by the Court to represent Debra Green, the filial

defendant here.

In two or perhaps three days the Court will place in the hands of twelve of you a truly awesome and, in a real sense, the sacramental, religious task of passing upon a fellow human being, of deciding whether beyond a reasonable doubt, as your mind sees it, as your heart sees it, whether beyond a reasonable doubt Debra Green is guilty of any of the five counts with which she is charged; all of them perhaps.

All of us have lived now for a long time with concepts such as a person at a criminal bar is presumed innocent; the burden of proof is always on the prosecution; a defendant need not prove her innocence, and other such sacred concepts, and we have learned them in school, at our mother's knee, we may have heard them at 4th of July speeches by politicians thumping the hustings -- ladies and gentlemen, these are just mere platitudes, these concepts, unless and until twelve people such as yourselves are ready to breathe life into these concepts in a courtroom which, in a real sense, is a temple of justice. And unless jurors havr the intestinal fortitude to do that, then these concepts mean nothing.

Now, Mr. Reilly predicted that you would return a verdict of conviction and Mr. Mitchell predicted or half

predicted that you would return a verdict of acquittal. I make no predictions, which doesn't mean at all that I suggest that my client is guilty.

Debra Green has entered a plea of not guilty to this indictment. She could have done what perhaps 95 percent of the defendants at the bar of this court do, which is to plead guilty.

As a matter of law, the Court will advise you, when a defendant at the criminal bar enters a plea of not guilty, that defendant denies, denies every material allegation in the indictment.

Mr. Mitchell alluded to guilt or innocence being an individual thing. If I may elaborate on that a bit, as the Court will at some greater length, you will ultimately be asked basically to render ten verdicts, not five, because there are two defendants.

Now, I quibble with Mr. Mitchell only in one small respect and that is that he told you that guilt or innocence is to be decided by you, and often jurors are told this even by judges, and I say that even when judges say it that is nonsense.

A defendant is presumed innocent. That presumption envelops and accompanies that defendant until such time, if the time ever comes, when in the jury room,

after deliberations, it is your judgment that the proof adduced at trial so overcomes that presumtion that guilt has been proven.

What am I saying indirectly? That you are never to debate over whether a defendant is innocent.

MR. REILLY: I object to this. I think this is going beyond the scope of an opening.

THE COURT: I think Mr. Thau has about finished this line of argument. I'm sure he will be moving on.

MR. THAU: I will, your Honor.

The presumption being there to begin with, that presumption remains with the defendant unless the prosecution has overcome it by sufficient proof.

So your function is not to say: Well, is the defendant innocent? Let me hear argument here among or from the other jurors as to why the defendant is innocent. The question is: Is the defendant guilty? That is really the question.

Now, because there are two defendants here, there are two lawyers here. It is the fitting and the proper thing because sometimes invariably there may come into the picture a certain conflict of interest between two defendants, be they husband and wife or otherwise.

I ask you to keep your critical senses but,

as you listen to this evidence, to withhold judgment and in two or three days to do justice.

Thank you.

THE COURT: You may proceed, Mr. Reilly.

MR. REILLY: Your Honor, the Government calls as its first witness Miss Lily Yu.

L I L Y Y U, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

THE COURT: Miss Yu, would you please keep your voice up so that the juror who is farthest from you will be able to hear your testimony?

THE WITNESS: I will try my best.

DIRECT EXAMINATION

BY MR. REILLY:

Q Where are you employed, Miss Yu?

A I was employed at 40 West 57th Street, First Avenue, City Bank.

Q What is your position there?

A I was a teller.

Q On March 5, 1976 were you employed as a teller at the First National City Bank?

A Yes.

Q At that branch?

A At the same branch.

Q Did you have lunch that day?

A Yes, I had lunch very early on that day at around 11:00.

Q Sometime after lunch did anything unusual happen?

A No, not until starting before 2:00.

Q What happened then?

A Well, I just finished my customer, and I looked up and there is two black -- a man and a woman at my window.

The man tried to ask the girl to show me a note and say, "This is a stickup."

And then right away I try to look for an alarm to push, and the boy said, "Don't push the alarm," and then I start to say, "I didn't," and the boy, he said to the girl, said, "She did it. Let's go," and they just turned away.

MR. THAU: "She did it" or "she didn't"?

THE WITNESS: "She did it. Let's go."

Q Do you know how long a period of time passed between the time they first came to your station at the tellers' counter and when they left?

A A couple of minutes.

Q During that period of time did you look at the male and the female?

A I can't remember. I just saw the note right in front of face, almost right in front of my face. So, I didn't have enough time to look at the male and female.

Q Tell us just what you recall about the male.

A Well, they both look very young to me and not too tall, and slim and short hair.

Q Can you tell us what color they were?

A They are black, both black.

Q Are you familiar with the bank surveillance camera at the First National City Bank at 40 West 57th Street?

A Yes. We have one right at the top, top right corner of the exit door.

Q Where is that in relationship to where the tellers' counter is?

A Well -- I beg pardon. I didn't get it. I'm sorry.

Q Where is the camera positioned in relation to where your tellers' counter was?

A I'm sorry. I don't know how to answer that.

THE COURT: Would you do this --

THE WITNESS: Yes.

THE COURT: -- would you assume that you are now in front of your tellers' counter?

THE WITNESS: Yes.

THE COURT: Would you point out where the surveillance camera would be?

THE WITNESS: Right over there in the corner. There is the exit door, and then the camera was on top of the right corner of the exit door.

THE COURT: Does the camera face the teller's window or does it face the counter or does it face in another direction?

THE WITNESS: It face the only bank of the tellers' windows, faces the tellers' windows.

MR. THAU: May the record reflect when the witness was asked where the camera faced whether she pointed directly ahead of her?

THE COURT: Let her point again.

Assume that you are at your tellers' counter and this is your counter, just the way the witness stands. Would you now point with your finger in the direction of the surveillance camera?

THE WITNESS: The exit door is right about on that side and the camera was right-hand side of the top

corner of the exit door.

THE COURT: The witness pointed in a direction not directly ahead of her, not to the side of her, but in between, to the right.

Q Are you familiar with the layout of the First National City Bank branch at 40 West 57th Street?

A Yes.

MR. REILLY: I would like to mark as Government's Exhibit 1 a photograph.

THE COURT: That will be 1 for identification.

(Government's Exhibit No. 1 marked for identification.)

Q I am going to show you Government's Exhibit 1 for identification, Miss Yu, and ask you, first of all, does that depict the layout of the First National City Bank branch where you work?

A Yes. I work at the No. 4 window.

Q Excuse me.

Just tell me yes or no; does that depict --

A Yes.

Q -- the First National City Bank where you work?

A Yes.

Q Do you recognize certain features?

A Yes. I recognize the background of the pictures,

everything there.

MR. REILLY: I'm going to try to assist the jury in this regard, your Honor, if I might.

THE COURT: Don't show it to the jury yet.

MR. REILLY: All right.

Q Where on the photograph is the tellers' counter?

A The tellers' counter is over here, right here (indicating).

Q Stretching across the top of the photograph?

A Yes.

Q Where in particular is station No. 4?

A Right here (indicating).

Q Pointing to the right-hand corner of the photograph?

THE COURT: Top right-hand portion.

Q Is that correct, Miss Yu?

A Yes.

Q Where is the door, the exit door, on that photograph, or where would it appear to be?

A It would be somewhere in here on the bottom.

MR. THAU: Since only the witness has seen the photo, may I suggest that since the photo may later be received in evidence that perhaps the witness be given

a pencil or some marking device with which she might mark the photo itself with respect to doors?

MR. REILLY: We have a record of it. I'm satisfied to proceed in this manner.

THE COURT: Very well, you may.

The witness has just indicated that the door of the bank is at the lower center of the photograph; is that correct?

THE WITNESS: Yes.

Q In the center of the photograph, are there pictured two individuals?

MR. THAU: I object to a recital of what --

THE COURT: All right, please.

Sustained as to form.

Q Is there anyone pictured in the photograph?

MR. MITCHELL: Objection, your Honor.

I'm going to object to this.

May we approach the side bar?

THE COURT: No.

The objection is sustained.

Q Are you familiar with how the bank surveillance camera system works at your branch?

A Yes.

THE COURT: That is, how it worked on March 5,

1976.

Q Are you familiar with how it worked on that date?

A Yes.

Q Can you tell us whether or not the bank's surveillance camera constantly takes pictures?

A No, it wasn't.

Q When did the bank surveillance camera take pictures? What would prompt it to do so?

A When we push the alarm.

Q Then what happens?

A Then the camera was start to take pictures.

Q Not before?

A Not before.

Q Only after?

A Only after.

MR. REILLY: I have no further questions, your Honor.

MR. THAU: May we approach the bench, your Honor?

THE COURT: Yes.

(At the side bar)

MR. THAU: Your Honor, do we take it that the Government will not be offering this photo?

MR. REILLY: We will be offering it through the FBI agent, or we will just offer it if you will stipulate that it was a photograph taken on that day.

MR. THAU No, I'd rather not.

MR. REILLY: We intend to offer it later on.

THE COURT: Has it been established that the mechanism which turned on the surveillance camera was activated by this witness?

MR. REILLY: It has been established that she pushed the alarm on that date. I'm going to have established -- I concede that on March 5, '76 the cameraman went to the bank, took the film out, handed it to the FBI, and that is it.

MR. MITCHELL: She said pressing the alarm activates the camera. We have testimony at the preliminary hearing that the pressing of the alarm sometimes does not activate it.

MR. REILLY: That is not true. Other witnesses said it didn't work.

THE COURT: I think you may be confusing the testimony of this witness regarding this branch with at least one other branch.

MR. MITCHELL: She can't honestly say that. She said it should work but it doesn't mean --

THE COURT: If you want to inquire on cross-examination you may do so. Of course, you will do so at your peril, but I would suggest that there is a presumption that when a device is activated it works, and therefore it would be necessary to rebut that presumption, and I suggest that under the circumstances you may or may not choose to inquire on this.

I'm not going to rule at this point, but at the moment I just want to be certain in my own mind whether the witness said she had pressed the alarm. Mr. Reilly's recollection is that she said she did.

My recollection further was that the pressing of the alarm would be what would activate this camera. Therefore, the Government has begun to lay a foundation.

They have evidence of intent and intend to introduce the photograph with that in mind.

You may or may not want to inquire.

MR. MITCHELL: One other question, while we are having the ground rules, because of the peculiar nature of teh testimony in this case:

The district attorney asked for a description of the people who held her up, and she gave it, but one item he left out, and I would like to ask that question without opening the door any further except to a

description. I would like to know whether she remembers what the male individual wore.

THE COURT: You certainly have a right to ask the question.

MR. MITCHELL: I don't want to open up any doors.

MR. REILLY: You may open some doors.

THE COURT: At this time I can't tell you what doors you would open.

I would suggest, Mr. Mitchell, that since there has been no affirmative proof established, you might want to leave well enough alone. If you ask the question, what he was wearing at the time, knowing as you do that there was a search made, and knowing that a coat was seized by the FBI, which I would suggest is similar to the coat worn by this individual, you may have very well opened something up.

MR. MITCHELL: If I can get the document, I will show you my problem.

THE COURT: Let me see it.

(Pause)

MR. MITCHELL: This is the tail end of the statement, Miss Yu's statement, "wearing a dark blue or black short leather jacket."

This obviously is not a short jacket, nor is it leather. I just want to ask her that.

I'm not concerned, I'm not worried about the admissibility of anything found in the house, because I know that there was no leather jacket found in the house.

What I want to know, and I think I'm entitled to protect the defendant if I ask, "Did you state to the FBI in describing the individual that he wore a dark blue or short leather jacket?", and she says, "Yes," that I don't open any doors.

MR. REILLY: You open the door and go down point by point and on all those other items where she correctly identified the defendant.

THE COURT: You have every right in the world to ask the question which you propose to ask.

At that point, if we have gotten her started on what the appearance of the male defendant was on the day in question, I will let Mr. Reilly inquire as to what else she remembers, because you are doing this to seek to impeach her. He has a right at that point to ask her other questions which cover the same description given at the same time to rehabilitate her.

She has failed to identify the individuals in question at the moment.

I tell you now you have a perfect right to ask her what the people were wearing, and if you choose to get that in that she gave a prior statement to the FBI and that it was of a different description, I suggest that I will permit the Government to make inquiry about what else she told the FBI at that time.

MR. MITCHELL: At that time only?

THE COURT: Yes, at the time she gave the description.

MR. MITCHELL: Fine.

(In open court)

THE COURT: You may proceed, Mr. Mitchell.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Miss Yu, I just have one question.

On the same day you were interviewed by an agent from the Federal Bureau of Investigation to whom you told the story you have just related; is that right?

A Right.

Q At that time you gave a description of the male individual; is that right?

A Yes.

Q Do you recall that at that time when asked about the clothing of the male individual you said he was

wearing a dark blue or black short leather jacket?

A Yes.

Q Was that correct?

A I said so, but I can't remember what he wear, but that is what I remembered.

Q At that time?

A At that time.

MR. MITCHELL: I have no further questions.

CROSS-EXAMINATION

BY MR. THAU:

Q Miss Yu, I show you the picture you had a moment ago.

Would you be good enough to write with this pen where the counter is on the photo?

A That I worked at?

Q Yes, that you worked at.

THE COURT: Indicating the upper right-hand corner with an X.

Q Is there anything else that Mr. Reilly asked you --

Where was the door?

A Here (indicating).

THE COURT: The witness has written the word "door" in the lower center of the photograph.

Q Miss Yu, with respect to the female you told us about, you were interviewed about the incident by an FBI agent on the very day of the incident; is that right?

A Yes.

Q At that time you gave a certain description of that female?

A You want me to repeat that?

Q I am asking you whether you did.

A I did.

Q And did you tell the FBI agent that she wore a short, dark jacket?

A Yes.

Q Do you remember whether you told the agents whether that jacket was solid in its dark color or not?

A Well, I tried to give my information as much as I remembered, but I'm not sure what kind of jacket they wear on that date.

But one thing I remember, the girl was wearing a printed shirt.

Q A printed shirt?

A Yes.

Q Did the woman say anything to you while she was at your counter?

A I beg pardon?

Q Did the woman say anything to you while she was at your counter?

A No, they didn't speak anything.

Only the boy said, "Don't push the alarm," and then -- the man only said, "Don't push the alarm, Miss."

Q And the woman did not say a word?

A No.

Q The woman never displayed a weapon, did she?

A I didn't see any.

MR. THAU: Thank you.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Did you push the alarm?

A I did.

Q When you were looking at the male and the female opposite the counter, what portion of their bodies could you see?

A Well, the counter is about -- you know, I'm short. I always stand up at the counter. I only can see the most part of the customers above here (indicating).

THE COURT: Indicating the chest. The witness has taken her right hand and drawn it across her chest,

chest-high.

Q Did you observe the male and the female as they left the counter from you?

A I don't think so. I can't remember, anyway.

THE COURT: What, if anything, happened after the man said, "Let's go," whatever he said?

THE WITNESS: He just said, "She put" -- "She did it. Let's go."

I mean, he speak, he talked to the girl and said, "Let's go. She did it."

THE COURT: Then what happened?

THE WITNESS: They turned away and left. They walked away.

THE COURT: In which direction?

THE WITNESS: To the door, front door, exit door.

Q Do you recall whether there was anyone waiting on line behind these two individuals?

A No.

Q Do you recall --

MR. THAU: Is the answer that she doesn't recall or whether there was not?

THE COURT: I don't know. I think we would have to find out.

Was anyone, to your recollection, waiting on line behind the man and woman?

THE WITNESS: No.

Q After they left, after the man and the female left your --

A Then some customer come to my window that was open and empty -- because we always have customer on lines.

Q Did the FBI or other police agents come to the bank shortly after this attempted robbery?

A Yes. They came about a couple of minutes later. First the policeman came first, and then the FBI people.

Q And did they ask you to give them descriptions at that time of the male and female?

A Yes. The policemen asked me to give them the description, and then after the FBI came and I also give them the description.

Q With respect to the female, do you remember telling the FBI agent about how old she was?

A She was young, around twenty years.

Q And do you remember telling the FBI agent how much the female weighed?

A Around 110.

Q Do you remember telling the FBI agent the complexion of the female?

A Yes. Dark; black, I mean.

Q Do you remember telling the FBI agent the approximate height of the female?

A I said around 5'3" to 5'5".

Q With respect to the male, do you remember telling the FBI something about the age of the male?

A Also young, around twenty.

Q Do you remember telling the FBI the height of the male?

A Same height as the woman; about the same height as the woman.

Q Do you remember telling the FBI the weight of the male?

A About 130 pounds.

Q Do you remember telling the FBI about the male's hair?

A A short cut, short hair.

Q Do you remember telling the FBI about the male's complexion?

A Yes; black.

Q Do you remember telling them whether it was

light black, dark black, medium or what?

A I didn't specify. I just say black.

MR. REILLY: No further questions.

MR. MITCHELL: Just one moment, your Honor.

(Pause)

MR. THAU: I believe Mr. Mitchell has nothing.

RECROSS-EXAMINATION

BY MR. THAU:

Q Before testifying at this trial, did you have a chance to review the typewritten reports made following the FBI's interview with you?

A You want -- beg pardon?

Q Before testifying here today, in the last week or so have you had a chance to examine and read the reports of the interview conducted of you by the FBI?

A No.

Q You have never seen --

A You mean after I make it -- the FBI show me the report?

Q Yes. Recently; in the last two days or so.

A No, no.

Q I show you 3518 for identification and ask you whether in the last week or two, or perhaps today or

yesterday, whether you have been shown this and asked to read it, perhaps to refresh your recollection.

A Just now, yes.

Q You have been shown it?

A Just in the -- a couple of days ago.

I read it before.

Q A couple of days ago you were shown the document I just showed you; is that right?

A Yes.

Q And that document contains, does it not, the description that you gave on the day of the incident; is that right?

A Yes.

Q And when in answer to our questions here you told us again how you had described the boy and the girl, or the man and the woman, you were relying, were you not, at least in part, on what you had read in this report in the last day or two; isn't that right?

A No, this is what I'm -- I'm remembering.

Q You remember saying that to the FBI?

A Yes.

Q Did you ask to see those reports recently?

A No.

Q They were just given to you?

A Yes.

Q Mr. Reilly gave them to you?

A Yes.

Q This was in his office?

A No, it was here.

Q I'm sorry --

A Right here.

Q Right here in the courtroom?

A Yes.

THE COURT: Would you speak louder in response to the next question?

Let me have it repeated, the last question and answer back.

(Record read)

MR. THAU: Thank you.

MR. MITCHELL: No further questions.

MR. REILLY: No further questions, your Honor.

THE COURT: Thank you, Miss Yu.

(Witness excused)

THE COURT: Call your next witness, Mr. Reilly.

MR. REILLY: The Government calls Mrs. Charlene Churilla.

C H A R L E N E C H U R I L L A, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Miss Churilla, where are you employed?

A Manufacturers Hanover Trust at 1185 Avenue of the Americas.

Q What cross street is that located at?

A 47th Street.

Q How long have you worked there?

A Two years.

Q What is your present capacity?

A Teller.

Q Directing your attention to February 25, 1976, were you employed as a teller then?

A Yes, sir.

Q On February 25, 1976, did anyone attempt to rob the Manufacturers Hanover Trust Company at your branch?

A Yes, sir.

Q Do you recall what time that was?

A Around 11:35.

Q Had you gone to lunch yet?

A No.

Q Can you tell us what happened?

A It was a relatively slow day, and two people were on my line, and I went -- the woman and a man, and the woman had a note in her hand on a piece of paper and I went to take the paper.

I couldn't -- she wouldn't give me the paper.

I read the note and it said, "We have a gun. Give us fifties and twenties," at which point I pulled my alarm and closed my drawers, which locked.

Q Did you have any conversation with either of these two individuals?

A Yes. I asked them if they had a bag for me to put the money in.

I basically wanted to stall them a little bit.

And the gentleman of the two said, "No, just give it to her."

Q Do you recall whether the gentleman was carrying anything at that time?

A Yes, he had a gun on the counter.

Q Was he holding the gun?

A He was holding the gun in his hand with his left forearm on top of his hand.

Q Did he say anything in connection with that gun

at all?

A No.

THE COURT: In which direction was the gun pointed?

THE WITNESS: At me.

Q What happened next?

A Since my drawers were locked, I wanted to inform them of what I was doing so they wouldn't think I was pulling something, so I told them I was unlocking my drawers.

He told me not to pull any buttons while I was down there.

I opened up my second drawer and I was looking for a chance to duck, and he looked the other way and I ducked underneath my counter.

Q Was that the last time you saw either the male or female?

A Yes.

Q How much time passed from when they first came to your counter and when you ducked?

A Around three minutes.

Q During thatperiod of time were you looking at the man and the woman?

A Yes, I was.

Q Was there any obstruction between you and them?

A No, sir.

Q What were the conditions, the lighting conditions at the bank that day?

A It was in the afternoon and it was light outside, and our curtains are thin, so it wasn't dark and gloomy or anything.

We have overhead lights.

Q What was the distance between you and the male and the female?

A I'd say about, you know, 3 feet, just the counter space between us.

Q Were you looking at them during that period of time?

A Yes, sir.

Q Can you describe the male and female?

A You want me to describe them?

Q Yes, as you recall them on that day.

A In my report I said that the man was about 5'9", Negro, around 140, 150 pounds, close-cropped hair, not an Afro. He had on a cloth coat, a beigecus-brown color.

Q Now, the female -- do you recall what she

looked like?

A The female was roughly about 5'5", probably around 130 pounds, 120 pounds, and hair to here (indicating).

THE COURT: Indicating the --

THE WITNESS: Collarbone.

THE COURT: -- collarbone.

A To the collarbone area, and she had a beret on her head and a cloth coat, or possibly -- I might have said a leather coat at the time. But she had a coat on.

Also Negro.

Q Do you see the male in the courtroom?

A Yes, I do.

Q Would you please point him out?

A That gentleman at the second table.

Q There are three gentlemen at the table.

A The black one, second from the right.

THE COURT: Indicating Mr. Green.

Q And do you see the female in the courtroom?

A Yes. Yes, I do.

Q Would you point her out?

A Sitting at the same table next to the gentleman.

THE COURT: Indicating Mrs. Green.

Q Are you familiar with how the cameras, the surveillance system in the Manufactur Hanover Trust Company works?

A Well, when we activate the alarm, the camera is activated, and then it starts taking pictures.

Q Do you know whether or not the camera is ever taking pictures when there is no alarm that has been sounded?

A No, sir, it's not supposed to.

MR. REILLY: I would like to mark this Government's Exhibits 2 and 3 for identification, two individual photographs.

(Government's Exhibits Nos. 2 and 3 marked for identification.)

Q I am showing you 2 and 3 for identification.

I would like to ask you, first of all, whether that is a picture of your branch of the Manufacturers Hanover Trust Company.

A Yes, sir.

Q Do you recognize any of the individuals pictured in the photograph?

A Just the two -- just the two, just Mr. and Mrs. Green.

Q And they are on the side of the counter facing

camera; is that correct?

A No.

Oh, yes, they are on the side that is toward the camera, yes, sir.

Q Are they at the counter or away from the counter?

A In one they are at the counter and one they are leaving the counter.

MR. THAU: I'd object to any further description of a document not in evidence.

MR. REILLY: We offer the documents in evidence, 2 and 3.

MR. THAU: May we have a voir dire on that?

THE COURT: Yes, you may.

MR. THAU: May we approach the side bar?

THE COURT: Yes.

I think this might be a good opportunity, ladies and gentlemen, for you to take a very short recess.

I do it primarily for our reporter who has been exceedingly busy today, and I'll ask you to take five minutes and then we will continue until the conclusion.

Ladies and gentlemen, please do not discuss the case among yourselves. Keep an open mind on all facets of the case until it has been completed and given to you

following my charge.

(The jury left the courtroom.)

(Recess)

(At the side bar)

THE COURT: Mr. Thau, a request was made for a voir dire and we have now proceeded to the side bar.

I would ask if either you or Mr. Mitchell would like to conduct that voir dire?

MR. THAU: Yes, we would.

THE COURT: Very well, you may do so at this time.

(In open court; jury present)

THE COURT: You may proceed with your voir dire, Mr. Thau.

MR. THAU: Thank you, your Honor.

VOIR DIRE EXAMINATION

BY MR. THAU:

Q Miss Churilla, Mr. Reilly showed you Exhibits 2 and 3 for identification; is that right?

A Yes, sir.

Q Those phots depict a portion of the counter at your bank; is that right?

A Yes.

Q Do you recall whether the two persons who came

to your counter left your counter before you ducked?

A No, they didn't.

Q The photos show you, we take it, are frames from a continual series of photos that were activated by your pushing the alarm; is that right?

A Yes, sir.

Q Have you ever had a chance to examine frames other than these two?

A Not that I can recall.

Q You never retrieved the film from the camera you activated, did you?

A No, sir.

Q As a matter of fact, you never ever came into possession of that entire film?

A No, sir.

Q Do you agree with me that you do not appear on these two photos?

A Right.

Q The bank or that portion of the bank depicted on these photos looked physically the same a month or two prior to this incident as it did the day of the incident, February 25, didn't it?

A Yes.

Q You are shaking your head?

A Yes, sir.

Q The reason you have to speak while you are here is because of the reporter.

A Yes. I'm sorry.

Q So as to the physical appearance that portion of the bank looked the same a month or two after the incident as it had the day of the incident?

A Probably.

Q Right.

In other words, the counters remained as they were?

A Right.

Q And as they had been; right?

A Yes, sir.

Q Now, when for the first time did you see Exhibits 2 and 3 for identification?

A You want the date?

THE COURT: Approximately.

Q Approximately.

A I really -- I couldn't even give you a guess.

Q Could you tell us with reference to the day of the incident or with reference to any other event, birthday, Christmas?

A All I know, it was a few weeks after the

occurrence.

Q That is when you first saw these two prints?

A Yes, sir.

Q Have you any personal knowledge whether in the month preceding the incident you told us about, and the month succeeding it, anyone in that bank had occasion, for one reason or another, to trigger off the camera you triggered off by your alarm?

A As far as I know, no, but that is not my --

Q You don't know?

A That is not my realm of knowledge. That is not my information to have.

THE COURT: But as far as you know the answer is no?

THE WITNESS: No.

Q Or, to put it another way, you don't know whether anyone did it?

A If an alarm has been activated, if I would know?

I don't know when it was done.

Q Are you in charge of security?

A We have monthly tests. We run on all security things in the branch.

As far as a fluke, someone activating it or something like that, we would know because the police would come automatically if it wasn't done in a test.

Q You have no recollection that the police came?

A No, sir.

Q When a test is run, are the police informed in advance not to respond?

A Right.

No, there is no customers left in the bank. It's just personnel that is left, and they do a test on them.

MR. THAU: Excuse me a moment.

(Pause)

MR. THAU: I'm through with the voir dire.

I object to the introduction of those photos in that this witness is not the competent person, although she concededly has some knowledge of what happens at that bank, but is not the expert who would know whether at other times cameras were activated.

She gives us the state of knowledge of a teller.

In addition you are dealing with a chain of custody problem when you have frames from a camera from which film was removed by others, kept by others,

printed by others, and on that ground I would object to it, to its receipt in evidence.

MR. MITCHELL: I have already objected to it on the chain of custody.

THE COURT: Mr. Reilly.

MR. REILLY: Your Honor, I would like to ask the witness just two more questions.

THE COURT: You may.

DIRECT EXAMINATION RESUMED

BY MR. REILLY:

Q Directing your attention to Exhibits 2 and 3, is that a fair representation of the teller station where you were working on February 25, 1976?

A Yes.

Q And in particular, where physically was your teller's station located along the counter?

A I'm at the very first station, right next --

THE COURT: Looking at the photographs, in what direction would the first station be?

THE WITNESS: Right here.

THE COURT: At the right side.

Q Is that the corner of the teller's counter?

A Yes, sir.

Q Further, are there two individuals depicted in

both of those exhibits?

MR. MITCHELL: I object to that. That is not in evidence.

THE COURT: I think she can answer if there are persons depicted on the photograph.

A Yes, there is --

Q Is that a fair representation of the position at which the two holdup individuals were standing on the day of the attempted bank robbery?

MR. MITCHELL: Objection.

MR. MAU: Objection, principally because the witness has already conceded that she doesn't appear on it, and if she doesn't it's strongly suggested that she couldn't see where these individuals were at the time these photos were taken.

THE COURT: Let's take Exhibit 2 for identification, the first photo.

Q Is Exhibit 2 a fair representation of where the two individuals who attempted to hold you up were standing immediately before the time when you ducked behind the counter?

A Yes, sir.

Q Is that also true with respect to Exhibit 3 on the right?

A That one I can't ell, because they are leaving and I was ducked at that time, at that point.

MR. MITCHELL: I'm going to object to their "leaving," your Honor.

I'm objecting --

MR. REILLY: If Mr. Mitchell would like to examine the reocrd, he would probably come to the same conclusion.

THE COURT: He objects.

The jury has heard the testimony. I am going to let it stand.

The jury will recall that while the two persons were standing in front of the counter the teller ducked.

As I recall it, Miss Churilla, when you came up they were gone; is that correct?

THE WITNESS. When I came back up I didn't even look, so I assume they were gone.

THE COURT: Did you see them leaving?

THE WITNESS: No, sir.

THE COURT: When you last saw them, where were they?

THE WITNESS: They were standing at my counter.

Q Finally, Miss Churilla, are the two individuals

pictured in Exhibits 2 and 3 the individuals who held you up on February 25, 1976?

MR. MITCHELL: Objection.

THE COURT: Do you recognize the individuals who are pictured in Exhibits 2 and 3?

THE WITNESS: Yes, sir.

Q How do you recognize them?

A They look just like thw two people that were at my station. They are the two people.

MR. REILLY: Thank you very much.

I now offer Government's Exhibits 2 and 3 in evidence.

MR. THAU: I have a further voir dire on the last questions, if I may.

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. THAU:

Q Looking at these two photos, you said of the female that the female depicted on that photo is the same one as the one who attempted to hold you up; is that right?

A Yes, sir.

Q Do you agree with me that this female, as shown on the photo, seems to be wearing --

THE COURT: There are two photos. I think you had better distinguish.

Q -- both photos -- appears to be wearing a long, plaid designed coat? Would that be fair?

A Yes, sir.

Q Huge squares?

A Yes, sir.

Q As a design?

A Yes, sir.

Q Do you recall being interviewed by the FBI either the day of the incident or the next day?

A Yes, sir.

Q And giving a description of the woman? Do you?

A Yes.

Q Would it be fair to say that on that occasion which was right after the incident, you had a fresher recollection of the incident than you have today?

MR. MITCHELL: Your Honor --

A I don't know if I would say fresher or not.

MR. MITCHELL: During the examination, may I have the two photographs?

THE COURT: Yes, of course.

Q You don't know whether your recollection upon

your initial interview was fresher than it is today?

A I remember it pretty vividly now.

Q You remember it vividly now?

A Yes, sir; and then.

Q And you remembered it vividly then?

A Yes, sir.

Q And with your vivid recollection of what happened a few hours before you told the FBI agent what the woman wore, did you not, that she had a rust-brown leather jacket; is that correct?

A I didn't say "jacket."

Q You didn't.

Did you have a chance recently to review certain reports that were made by the FBI, reports conducted of an interview of you of February 25?

A Will you say that all over again, please?

Q Were you shown a report dated February 25 of an FBI interview conducted of you?

A (No response)

Q You never did?

A Not on February 25, no, sir.

Q Were you in fact interviewed February 25?

A I was interviewed but I never saw the report.

Q Did you see a report dated March 2 of your

February 25 interview?

A (No response)

Q Let me put it another way.

I show you 3504 for identification, a three-page document, and ask you whether you have seen this recently? And you may flip through it if you like.

A I never saw this report.

Q You never did?

A No, I saw another one, but not this one.

Q Is it your testimony, Miss Churilla, that you never told any FBI agent that the female wore a rust-brown leather jacket?

A I didn't say that.

Q Did you ever tell an FBI agent that?

A Yes.

I never said "jacket." I said she had on a rust-brown leather coat, but never jacket.

Q Did you tell him whether that rust-brown coat was solid in color or had designs on it?

A I wasn't paying attention to the coat. That is not what we are instructed to do.

Q Never mind what your instructions are.

MR. REILLY: Objection, your Honor.

THE COURT: She answered she wasn't paying

attention to the coat. That I will let stand. The rest is stricken.

Q Nevertheless, you did make observation of the clothing; is that right?

A Yes, sir.

Q Do you and I agree that leather is generally of a shiny, smooth surface?

A Yes, sir.

Q Unlike cloth, which is porous and not shiny; is that right?

A Yes.

Q Based on your recollection of these two photos which you were holding a moment ago, would you agree with me that the female depicted on those photos appears to be wearing not only a plaid coat with huge squares on it, but that the material seems to be cloth rather than leather?

A It appears to be.

MR. THAU: Your Honor, I object to the receipt in evidence of these two photos on the ground that the contemporaneous description given by this witness is at such variance --

MR. REILLY: Objection.

MR. THAU: -- with what the photo --

THE COURT: No, you go right ahead. Make your speech.

MR. THAU: I don't intend to make one.

THE COURT: You didn't intend to, but it is a speech.

You object?

MR. THAU: Yes.

THE COURT: Overruled. Received.

MR. REILLY: Have you accepted 2 and 3?

THE COURT: Unless you want to add something.

MR. REILLY: No.

THE COURT: I think an appropriate foundation was laid.

MR. MITCHELL: Before you rule, may I have a voir dire on this?

THE COURT: Yes.

The Court will withhold any ruling until the voir dire has been completed. Then I will consider the matter at that time.

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q Miss Churilla, at your station is there a sort of a wall as you stand at the teller's cage to your left?

A It's not a wall exactly.

Q It's a partition?

A It's a partition that has frosted glass part of the way up, and the rest down is wood or something.

Q Where his Honor's dais,is at that point, that would be the --

A If this was my counter, yes, sir, there is a wall here.

Q When the two individuals approached you, who came first or did they come together?

A The first person I saw was the male.

Q Where was he standing in relation to your teller's cage?

A He was standing on -- there was one other customer at my station. He was directly behind that person.

Q Where was the female?

A I didn't see her right away, but when I finished my customer -- you know, I must have been looking down, putting my other transaction away.

When I looked up, at that point there were two people.

Q Where were they? In other words, using your --

A This is my corner at work. The male was standing here. The female was standing next to him here.

THE COURT: Indicating that the male was standing to the witness' left, the female was standing to the witness' right.

THE WITNESS: Yes.

THE COURT: But close together?

THE WITNESS: Right next to each other.

Q At that point who gave you the note?

A The female.

Q After that, did you speak to the male or did the male speak to you?

A I spoke to both of them.

Q Both of them.

Did the male respond in any way?

A Yes.

Q At that point were you looking at the male when he was answering you?

A Yes.

MR. MITCHELL: Your Honor, that is the end of my voir dire.

MR. REILLY: No further questions, your Honor.

We offer 2 and 3 in evidence.

MR. MITCHELL: I make the same objection as co-counsel.

THE COURT: Mr. Reilly, do you want to be heard on the objection which has now been joined in by Mr. Mitchell?

MR. REILLY: No, your Honor, other than to say that the witness has identified the description of the bank, of the individuals, and also the procedure by which the camera is set off.

She has further testified to her knowledge the camera was never set off, and it would be something that would come to her attention, other than that instance.

THE COURT: I show you Government's Exhibits 2 and 3 for identification. I ask you to look at them and tell me if those fairly represent the bank premises, particularly the area in the vicinity of your teller's window on February 25, 1976 at approximately 11:35 to 11:40 a.m.

THE WITNESS: Yes, sir.

THE COURT: The objections are overruled. The exhibits are received.

xxx (Government's Exhibits Nos. 2 and 3 received in evidence.)

MR. REILLY: No further questions, your Honor.

THE COURT: Mr. Mitchell.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Tell me, Miss Churilla, when the male individual was speaking to you, were you looking at his face?

A Yes, sir.

Q When he spoke did he open his lips?

A Well, it was said very fast. It was just a few words, so it was just kind of blurted out.

Q Did you notice his teeth at any time?

A I don't remember.

Q Did you notice that any teeth were missing?

A I wasn't looking at his teeth. I'm sorry.

Q Did you notice his ears?

A Only that he had ears, that's all.

Q Were they close to his head at the time? Were they --

A I wasn't looking at his ears.

Q You have given us a description that he had short hair.

A Yes, sir.

Q Are there any other facial characteristics that you can recall?

A Facial characteristics?

Q Yes.

A I don't understand what you are asking me. I'm sorry.

Q Did he have any marks on his cheeks?

A That in my police report I didn't report any. I couldn't remember any.

THE COURT: You couldn't remember any?

THE WITNESS: No, sir.

Q Did he have eyebrows at the time?

A Yes.

Q Were they thick or were they thin?

A It happened so fast I really couldn't tell you.

Q You said you saw a gun?

A Yes, sir.

Q From the moment that you saw the gun, were you looking at anything else but the gun?

A Yes, sir.

Q You were looking at him?

A Yes, sir.

Q Were you looking at the gun?

A I think I looked at it once.

Q Tell me this: You saw him from his shoulders

up, or from his chest up?

A Yes.

Q You described a beige cloth coat?

A Beigeous-brown cloth coat.

Q Was it one color?

A When I looked at it, that is what it looked like to me. It was one color.

Q Did you notice the collar on the coat?

A No.

Q Were you looking at the collar at all? Was there anything distinguishing about the collar of the coat?

A Not that I remember.

Q Was it a fur collar?

A I just told you, I don't remember.

MR. MITCHELL: I have no further questions.

CROSS-EXAMINATION

BY MR. THAU:

Q Miss Churilla, you did not take notice of the woman until she came up to your station; is that right?

A Yes, sir.

Q Did she speak to you?

A Never said a word.

Q Did you see her with a weapon?

Q Had the man spoken before you say the woman showed you a note?

A No. He didn't speak until I spoke to him.

Q You spoke to him?

A First.

Q The words you spoke were addressed to both these sudden visitors; right?

A Yes.

Q But she didn't respond to your words; is that right?

A Yes, sir.

Q Where did she have that note?

A In her right hand on the edge of the counter, on her side of the counter.

Q Is it about at that time that you saw the gun?

A No. No, it was after I read the note which said, as I said before, "We have a gun. Give us fifties and twenties."

Obviously she didn't have a gun because the note was in her hand, the other hand I couldn't see.

I looked at the man and it was at that point I saw the gun.

Q Now, with respect to what that note said,

are you testifying to it relying on your present recollection of what you saw then, or are you relying on a report that you have seen recently?

A I don't understand.

Q Did you read a report recently of an interview conducted of you in February?

A Did I read a report? No, I haven't read any reports.

Q Now, this woman, you gave a description of her to the FBI; right?

A To the FBI?

Q Yes.

A Yes, sir.

Q And respecting her hair, do you recall what you told them?

A Yes, sir. As I said earlier I recall her hair being to her collar line, collar bone area, and she had a beret on her head.

Q Do you remember saying that her hair was straightened?

A As opposed to an Afro?

Q Right.

A Yes.

Q Is it your present recollection that the hair

was straightened?

A Yes, sir.

Q Do we take it that the hair was in fact fallen to her collarbone area?

A As I remember it, I remember hair beyond the beret.

Q You never gave up any money in this case?

A No, sir.

Q Now, the woman was to your right and the male was to your left; is that right?

A Not exactly.

The male was to my left, the woman was to his left, but they were right next to each other.

She wasn't over here and he wasn't over there. They were next to each other.

Q I understand.

And they were facing you -- she was to your right and he was to your left?

A Yes.

Q He held the gun in his right hand; is that correct?

A Yes, sir.

Q The gun was resting on top of the counter?

A His hand was resting on top of the counter.

Q Was the barrel in any way pointing in the direction of his companion who was standing to his left?

A No.

Q Straight at you?

A Yes.

Q Did you hear either one of these two persons speak to each other, rather than to you?

A No, sir.

Q No one said, "Let's get out of here"?

A No, sir. I didn't hear it.

Q When you straightened up again, they were gone, I suppose?

A I didn't even look to see.

Q There did come a time when you straightened up?

A Right, I did, but I asked someone else if the customers were gone, and they said yes, and then I looked.

Q Then you stood up?

A Then I stood up.

Q And you didn't see them again?

A No.

Q You say that these two stood in front of you for some three minutes?

A I would say yes. I mean, that is just a guess,

though, of time. I didn't stopwatch it or anything. I didn't time it.

Q The note was shown you, you read it.

That took about what -- ten, fifteen seconds, I suppose; right?

A Yes.

Well, except that I went to take the note from the woman. She wouldn't give me the note, so then I could just pull it forward a little bit.

I add on more time to that.

Q There wasn't a lengthy tug-of-war over this piece of paper?

A No.

Q After that the gun was exhibited to you?

A Right.

Q Then you closed your drawer?

A No, before -- as I was reading the note, I got to the point that said, "We have a gun." I slammed my drawers shut and I pulled the alarm at that point.

Q And how soon after that did you duck under?

A There was a couple of seconds transpired in there before I went down under. I had to unlock my drawers first before I went down.

I asked them if it was okay if I unlocked my

drawers first. There was an exchange there.

I'd say there was another minute and a half to two minutes there, easily.

Q And this transpired after you set off the alarm?

A Yes.

Q Do you know how many shots a second or how many frames a second that surveillance camera takes?

A I have no idea.

Q But it is clear, is it not, that Exhibits 2 and 3 were taken after you had ducked under?

A Yes, sir.

Q So that there exists, does there not, or you assume there exists a good many frames taken before you ducked under?

A I would assume so, yes.

Q Have you ever seen any of those?

A No, sir.

MR. THAU: Thank you.

MR. MITCHELL: Your Honor, I just have one question.

FURTHER CROSS-EXAMINATION

BY MR. MITCHELL:

Q Miss Churilla, other than your conversations

with the two people that you say held you up, after you ducked down, did you say anything to any other tellers about activating t alarm or anything?

A No, not to any tellers, no.

Q Did you say anything to anybody after you ducked down?

A There is a girl that sits behind me at a desk, and when I was -- she thought I had fallen off my chair, and I was on the floor, and after, you know, some time passed by, you know, seconds, a minute, I don't know, before I stood up, I tried to say to her, "Are they still there?", without yelling it out, if they were still there.

I didn't want them to hear me, but I in effect wanted to ask her if they were still there, so I could get up.

Q Did you get an answer from her?

A N.. she just pulled her alarm, and I assumed they were ther , so I didn't get up.

Q She pulled her alarm?

A Yes.

Q There are two alarms in the back, a siren and a regular?

A There is no audible alarm at all.

Q How many buttons are there to activate?

A For me?

Q Yes.

A One.

MR. MITCHELL: I have no further questions.

MR. REILLY: Your Honor, we have no further questions of this witness.

THE COURT: Mr. Thau?

MR. THAU: I'm sorry, your Honor, no further questions.

THE COURT: Very well.

You are excused, Miss Churilla. Thank you very much.

(Witness excused)

THE COURT: Let me see counsel at the side bar.

(At the side bar)

MR. REILLY: We have two witnesses. I really was eager to have Miss Celinda Rivera called at least. She is a very nervous woman. She has been down here three times. She expressed a great reluctance to come down in any event. Mr. White, I think we might be able to forgo his testimony.

MR. THAU: It is my view that Miss Rivera couldn't see. In the absence of the jury, I now make a

request for a visit to the scene for a reenactment to see where she could see.

MR. REILLY: I don't think Mr. Thau has demonstrated in any significant way the geometry is such as to require that.

MR. THAU: I don't have to prove beyond a reasonable doubt that it can't be done. It's up to the Court's discretion.

THE COURT: Would you specify your application a little more clearly?

What do you mean by visiting the scene?

MR. THAU: Having the witness Rivera reenact herself at the scene.

She said she was seated herself at that time seeing from the vantage -- seeing whether she could observe the people standing at the counter from 6 feet away.

MR. REILLY: That is not a great distance. I think it's a matter of cross-examination.

THE COURT: I would suggest it is, also.

(Pause)

THE COURT: I have considered the time, and in view of the fact that there is another hearing scheduled at 4:00 o'clock in another criminal case, I think it would be inappropriate for us to start with the next witness.

Therefore, I am going to excuse the jury at this time and I would like to speak to the Government's witnesses to assure them that when they come back tomorrow they will be taken first.

Is that agreeable to you all?

MR. REILLY: Yes.

MR. THUA: It's agreeable to us.

MR. MITCHELL: It's agreeable.

(In open court)

THE COURT: Ladies and gentlemen, as I indicated to you, I believe, I have another matter which is scheduled for 4:00 o'clock, and since we have completed the testimony of the last witness, I have conferred with counsel and we have all agreed that this would be an appropriate time for the case on trial to recess.

The jury is directed to return. Please assemble in your jury room tomorrow morning at 10:00 a.m. I expect to proceed from 10:00 to approximately 1:00, and from 2:00 to something in the neighborhood of 4:30, a quarter to 5:00, possibly 5:00 o'clock at the outside, but I will try to have you avoid the evening rush tomorrow.

Please do not discuss the case among yourselves or with anyone else, either, around the courthouse, on your way home, at home, or on your way back to the courthouse

tomorrow.

Should you learn anything about this case from any source when you are outside the courtroom, I direct that you report the matter to me at once.

Some one or another of the banks may be familiar to you. I direct that you not -- I repeat -- that you not visit any bank mentioned in this case at any time during the trial without the prior express authorization of the Court.

Absent an express authorization, you are directed not to visit any scene testified to in the case.

Finally, please keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

The jury is excused and directed to return tomorrow morning at 10:00 a.m.

(Adjournment taken to June 17, 1976 at 10:00 a.m.)

mcs

UNITED STATES OF AMERICA

vs. 76 Cr. 517

JAMES MELVIN GREEN and
DEBRA FENNELL GREEN.

New York, June 17, 1976;
10.00 o'clock a.m.

(Trial resumed.)

- -

THE COURT: Good morning everyone.

Mr. Thau.

MR. THAU: Your Honor, since we had not gotten any grand jury transcripts from the Government on the first two witnesses it occurred to me that perhaps Mrs. Yu, who was the first witness, did not testify before the grand jury and, of course, I inquired of Mr. Reilly whether this was so and he tells me that is so and that it was hearsay testimony which resulted in Count 3 in the indictment. Apparently an agent offered whatever Mrs. Yu might have offered. Of course we haven't seen a transcript of that testimony.

Since Mrs. Yu was unable to identify either one of these two defendants on trial, I can't for the life of me understand what kind of evidence might have been

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presented to the grand jurors justifying Count 3 here. I don't exactly know whether I'm stating it accurately now, but I think that Mr. Reilly told me: Well, it is a picture also which purports to show these defendants, and I asked him: Well, was the picture an exhibit before the grand jury?

In any event, even if it was, what evidence was there that this picture showed these two defendants? It occurs to me that there may be a failure of proof before the grand jury concerning Count 3 certainly. I would like full disclosure on how these people or at least Mrs. Green came to be indicted on Count 3, since I can't understand it.

If the Government does not make proper representations or sufficient ones I would ask your Honor to inspect the grand jury minutes and to see whether it would warrant a dismissal of that count.

THE COURT: Mr. Reilly.

MR. REILLY: Your Honor, the Government opposes that motion. Mr. Thau is very wrong. Hearsay testimony is certainly allowed in the grand jury.

THE COURT: Yes, the Costello case has been the law in this Circuit for a long time.

MR. REILLY: I think if he stretches his imagination some I'm sure he would understand how con-

cievably the Government could present a sufficient case to establish probable cause in the grand jury.

Furthermore, and finally, Mr. Thau is really engaging in a fishing expedition which this Court has traditionally discouraged with respect to grand jury minutes.

MR. THAU: That is that hearsay testimony is not allowed before a grand jury. I'm saying that even if hearsay is allowed, and I recognize that it is, I can't see how the grand jurors could possibly have been given probable cause to believe that Mrs. Green committed Count 3 of this indictment, since the victim teller and the only witness from that bank couldn't identify her, so that even if the grand jurors had heard all the evidence that she gave to us firsthand, they heard it through the agent who testified in hearsay fashion that would not have justified the return of Count 3 in my judgment.

The Court knows that a grand jury is very much in control of a prosecutor. I'm trying to fish when I ask your Honor to inspect the grand jury minutes. I think that it is understood that your Honor reads them in camera and doesn't reveal them to me and if that is a fishing expedition, then I don't understand the meaning of that term.

Perhaps what Mr. Reilly is saying is that I want your Honor to go on a fishing expedition since your Honor would be reading the minutes and not me.

THE COURT: Mr. Reilly, I don't think I can just accept your rather generalized statement that the grand jury minutes suffice. My first query to you is:

Is Mr. Thay's motion made at this time, rather than before trial, timely?

MR. REILLY: We would contend that it is not timely. Mr. Thau has been on notice as to the pendency of this indictment and the superseding indictment for at least a week before the trial started, so we contend it is not timely.

Further, our representation is such that it is sufficient -- this Court and the Federal Courts in general discourage motions attacking the sufficiency of the evidence before the grand jury and in my experience in my review of the cases it is a very special case indeed when a defendant is allowed to have the judge examine in camera the minutes of the grand jury to make that determination. Apparently it is a practice that is common in the State Courts, but it is not at all common in the Federal Courts.

MR. THAU: With respect to whether this applica-

tion is timely, the witness testified only yesterday, as I recall. This application goes to a jurisdictional defect.

THE COURT: You have known for a couple of days actually that Lily Yu was unable to identify either defendant because she testified at a pretrial hearing on Monday of this week. It is now Thursday. Am I correct?

MR. THAU: Yes.

THE COURT: It might have been Tuesday that she testified, but it was a couple of days ago.

MR. THAU: Your Honor, as I well know, we are not entitled generally to grand jury minutes at a preliminary hearing and it is only after her testimony given yesterday, her trial testimony, that it occurred to me that this lady had never testified before a grand jury. I had every reason to believe that this woman's appearance has resulted in Count 3 of the indictment. It meant that before a grand jury either she had offered proof against these defendants who she could not personally identify, or that an agent had done so on her behalf, and it is therefore only yesterday when I was not given the grand jury minutes that I realized that apparently she didn't even testify before the grand jury, and I think that this is a very well taken motion.

We just can't permit indictments to result from no proof at all. This is not a fishing expedition, especially -- may I add this, your Honor:

That Mr. Reilly was very careful in his opening statement to say to the jury that:

The grand juryors, people such as you are, returned this indictment against these defendants, suggesting to these petit jurors that those grand jurors had heard sufficient proof to justify every point of this indictment.

MR. REILLY: I merely told the jury that a grand jury returned an indictment. This is what they charged.

Secondly, the whole issue of Lily Yu is a red herring because we all know, and Mr. Thau knows, that she couldn't identify the defendants, and whether her testimony was taken by hearsay or not by hearsay is totally irrelevant. Obviously there are many ways, especially since there are known photographs of the defendant available and since there are photographs which Mr. Thau has seen in this trial concerning the Citibank case available there is no reason to suppose there was no probable cause. This is the same evidence we are going to present to this very jury here.

MR. THAU: The fact that this woman cannot

identify these defendants here today or Monday does not mean that at some time in the past she did not identify them to a grand jury. This happens freauently. People identify someone at the scene of a crime. Shortly thereafter, when the trial comes, they have lost memory.

THE COURT: As I would see it, the Government was required to establish four elements before the grand jury in order to obtain an indictment:

First, at the time in question the bank involved was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

MR. MITCHELL: We will stipulate that.

THE COURT: I would suggest that that is not in issue.

MR. THAU: I stipulated it only for trial purposes, not for grand jury purposes.

THE COURT: Was proof of that fact elicited before the grand jury.

MR. REILLY: We do not intend to disclose minutes of the grand jury at this time.

THE COURT: Very well, you then will show it to the Court.

MR. REILLY: Your Honor, we oppose that motion.

THE COURT: I will look at the minutes, Mr. Reilly.

MR. REILLY: Your Honor --

THE COURT: If the Government declines I'm prepared to act.

MR. REILLY: We do not have the minutes at this time.

THE COURT: All right, if you don't have them, that is another story. If you don't have them you are going to have to make a disclosure to me. If you want to make it in camera on the record and I'll seal the record, I'll do it that way.

MR. THAU: Fine with me.

MR. REILLY: We oppose it, but I will have the grand jury minutes down here by 2 o'clock.

THE COURT: Very well.

I note that Mr. Rubin has arrived. I suggest that we take his matter first and then proceed to the trial. Is that satisfactory?

MR. THAU: It is, your Honor.

(Recess.)

(Jury present.)

THE COURT: Good morning, ladies and gentlemen. I apologize for the late start this morning. We had another matter which was scheduled for 9.30 and we were not able to begin that matter until after 10.

or repeat a question, please tell me.

We will resume now with the Government's direct case.

Mr. Reilly, call your next witness.

MR. REILLY: The next witness is Celinda Rivera.

-

C E L I N D A R I V E R A , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

THE COURT: Please keep your voiced up so that all jurors can hear you as you testify.

You may proceed, MR. Reilly.

MR. REILLY: Thank you, your Honor.

Q Mr. Rivera, where are you employed?

A Manufacturers Hanover Trust Company.

Q What location is that at?

A 1185 Avenue of the Americas.

Q How long have you been there?

A That particular branch?

Q Yes.

A Two years.

Q What is your position there?

A Adjuster.

Q Were you at work on February 25, 1976?

A Yes.

Q Do you recall whether there was an attempted bank robbery at your branch of the Manufacturers Hanover Trust Company on that date?

A Yes.

Q Do you recall what time that took place?

A No, I don't recall the time.

Q Do you have any idea whether it was in the morning or the afternoon?

A I assume it was somewheres between 12 o'clock and --

Q Had you had your lunch yet?

A No.

Q Where were you sitting at that time?

A At my desk.

Q Would you explain to the jury just where your desk is located?

A Right in back of the teller's counter.

Q Will you say that again?

A Right in back of the teller's counter.

Q Which way were you facing?

A Towards the wall.

Q Was that facing away from the teller's counter?

A Yes.

Q Did there come a time when you turned around?

A Yes.

Q What did you see, if anything?

A As I turned around to pick up the telephone -- I had a call -- I noticed that the -- I saw that the teller, Churilla, was under her station.

THE COURT: Would you describe what you actually saw at that point?

THE WITNESS: I just looked at her. She was just kneeling down. When I saw her down I assumed there was a robbery.

MR. MITCHELL: Objection.

THE COURT: We'll strike what the witness assumed.

You looked up?

THE WITNESS: I noticed there was a robbery.

MR. THAU: Objection.

THE COURT: Yes, that is a conclusion. We'll strike that.

You looked up and you saw something or somebody. Just tell us what your eyes saw.

THE WITNESS: A male and a female.

THE COURT: What, if anything, were they doing?

MR. REILLY: May we have --

THE COURT: Just relax for a moment, Miss Rivera. We'll wait until you compose yourself.

(Pause.)

MR. REILLY: Your Honor, I respectfully request that we have a very short recess to help the witness to compose herself.

THE COURT: Would you like a moment or two to step into the back?

THE WITNESS: Yes.

THE COURT: Will you step off the witness stand and you can go back into my robing room here.

(The witness went into the robing room and returned shortly thereafter.)

xx THE COURT: Mr. Reporter, would you read the last question to Miss Rivera?

(Question read.)

A I saw a male and a female.

Q Were they saying anything, Miss Rivera?

A I saw the male with his hands on the counter pounding up and down, saying, "Come on, Come on."

Q What did you do at that time?

A I just stood still staring at him. He was just staring at me and I stared at him. Slowly, with my right hand, I tried to activate the alarm, and when I pulled it I noticed that they both walked out.

Q Did you have an opportunity to observe the female during that period of time?

A All I noticed was her eyes.

Q How long a period of time passed between when you turned around when you pulled the alarm and they started to leave; how much time passed?

A I don't recall.

Q Do you have any estimate of whether it was a matter of seconds or whether it was a matter of minutes?

A I think it was a matter of minutes.

Q Do you see the male in the courtroom today?

A You are asking me if I see the man?

Q Yes.

A Yes, I do.

Q Will you please pint him out and indicate where you are pointing to?

A Straight ahead.

Q Are you pointing --

THE COURT: What is he wearing today?

THE WITNESS: A camel suit, looks like a brown

tie with a beige shirt.

THE COURT: Indicating the defendant James Green.

THE WITNESS: Yes.

Q You indicated that you had the opportunity to observe the female. Do you see her here in the courtroom today?

A Yes, I do.

Q Would you point to her, please, and indicate where you are pointing?

A She's right next to the defendant (indicating).

THE COURT: Indicating Mrs. Green.

MR. REILLY: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Miss Rivera, when you saw your teller crouch down behind the counter, did she say anything?

A No.

Q Never said anything at any time?

A If she did, I didn't hear a thing.

Q Did you notice the position of the two individuals that were standing, as you say, at the teller's counter? How were they standing?

A They were close to each other.

Q Assuming that your left hand is that wall that goes up a little bit in the bank where the teller's position is -- No. 1, do you recall that little partition or wall that goes up a bit?

A At the side, yes.

Q In relation to that, where was the female standing?

A Where the partition is. Well, looking this way he was this side and she was at the opposite side.

THE COURT: Indicating that the man was on the left as the teller would face out and the woman on the right; is that correct?

THE WITNESS: Yes.

Q Could you say what the man was wearing?

A What he was wearing?

Q What he was wearing.

A I don't know if it was a jacket or a shirt, but it was dark, maybe brownish, sort of like a brownish color.

Q How much of him could you see from where you were sitting?

A This part over here.

MR. REILLY: Indicating just below the shoulders and up.

Q Was he just wearing a shirt or was he wearing a shirt and a jacket?

A I didn't notice if he had a shirt and a jacket.

Q About how far were you from the man in feet?

A Maybe from here to over where that little box is. I really don't know these things in feet.

THE COURT: Would you say about 15 feet?

THE WITNESS: Right over here where that little thing is on the table, the paper or whatever that thing is.

MR. REILLY: Is that about six to eight feet? Will that be stipulated?

MR. MITCHELL: Six to eight feet.

THE COURT: Very well, gentlemen.

Q Did he have his head up and was he talking to you or was he talking to the teller?

A He was talking to the teller.

Q Did he have his head down?

A No.

Q Did you see him as he walked away?

A Yes.

Q Did you get a better view of him as he walked away than --

A No.

Q Could you see the back of his shoulders as he

walked away?

A No.

Q Did you notice anything about his feel from where you were seated?

A No.

Q Did you notice whether he had a fur collar on the jacket?

A I know for a fact he didn't have no fur collar.

Q He didn't have any fur collar?

A No.

Q You are positive of that?

A Positive and sure.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Miss Rivera, you were seated behind your teller; is that right?

A Yes.

Q And your position was facing the wall away from the customers; is that right?

A Yes.

Q And is the floor behind the counter level with the floor in front of the counter?

A Yes.

Q And about how high is that counter?

A I don't know.

Q Have you ever stood up against it?

A Yes.

Q Could you estimate for us how high it is either in terms of feet --

A Are you referring to the outside or inside part?

Q The topmost part of the counter. Let me withdraw that.

Do I understand about that counter that on the teller's side there is a lower area on which the teller works and on the customer's side it is slightly higher; is that right?

A Right.

Q So that there is something about waist level for the teller to work on; is that right?

A Yes.

Q And then from in front of the teller there is a higher wall on top of which the teller transacts business with customers?

A Yes.

Q I'm interested in the height of that wall that

(At the side bar)

faces a customer as he is dealing with the teller?

A At the time I had heels on and when I stood up it was around up to here where my neck is, some place around here (indicating).

Q Indicating right at the bottom of the neck.

Could you stand up, please?

How tall are you, Miss Rivera?

A Five feet two.

THE COURT: I would note for the record that the witness is wearing heels.

MR. THAU: With the Court's permission, might we have Miss Rivera stand next to your bench to see whether your bench approximates the situation?

THE COURT: Yes.

Q Would that be about the height, to your neck?

A I assume, yes.

Q Would you resume your seat, please?

So that the height of the counter in the bank as a customer faces it is just about the height of his Honor's bench as I am next to it; right?

A Right.

Q You heard a telephone ring and you were about to answer it when you saw Miss Churilla under her counter;

is that right?

A Yes.

Q And that is the first thing that attracted your attention?

A Yes.

Q Did she say anything to you?

A No.

Q Did she have her face to you or her back to you?

A Her face to me.

Q Her face to you. And she was crawling under the desk?

A Yes.

Q Did you have a good view of her face at the time?

A Excuse me?

Q Did you have a good view of Miss Churilla's face?

A Yes.

Q Was it dark there under the counter?

A No.

Q Did you go to her assistance?

A No.

Q Perhaps she tripped; perhaps she fainted?

A No.

Q You were still seated at your desk?

A I was standing up.

Q You were standing up at that point?

A At that point when I answered the phone I was standing up.

Q When you were standing up were the two persons at the counter still in front of the counter?

A Yes, that is when I noticed them for the first time.

Q When you were standing up?

A Right.

Q Did you testify before the grand jury in this proceeding?

A Yes.

MR. THAU: I ask for the minutes of her testimony.

MR. REILLY: I think the witness is not as familiar as Mr. Thau with court parlance. Her understanding of grand jury may not be the same as Mr. Thau's.

MR. THAU: I'll find out.

Q Miss Rivera, the grand jury is a body 23 people before whom people testify, witnesses testify. There is no judge. There is just a prosecutor there. Did you testify before such a body?

A There is no judge -- what?

THE COURT: There is no judge there. There is something in the neighborhood of 20 men and women there. Did you testify before such a group?

THE WITNESS: No, I don't think so.

Q You are not certain?

A No.

THE COURT: The witness' answer is "No", and the U. S. Attorney, I'm sure, can make a representation, if you wish.

MR. THAU: I believe her. I'm sort of testing this witness' recollection.

MR. REILLY: He is testing her understanding of legal terms.

THE COURT: It will be up to the jury.

Please, gentlemen, ask your questions and the witness will, I know, do her best to answer them.

Q Mr. Rivera, do you remember testifying in a proceeding recently, a pretrial proceeding, where there was no jury a few days ago; do you remember that?

THE COURT: In this courtroom.

A Now you are being clear. Yes.

Q If at any time I'm not clear, please tell me. If you don't understand or you would like me to rephrase

or repeat a question, please tell me.

Q Do you remember testifying at that time that you made your observations of these two visitors on the other side of the counter sitting down and that it is not until they left the area that you stood up and continued to look at them as they were leaving the bank floor?

A No.

Q You deny having said that?

A Yes, I deny having said that. I noticed those two people when I was standing up, not when I was seated, because when I was seated I was facing the wall.

MR. THAU: Your Honor, might the tapes of the pretrial proceedings be secured before Miss Rivera leaves the stand?

THE COURT: You could have requested them. There are no tapes.

MR. THAU: I mean the stenographic tapes.

THE COURT: The minutes.

If the reporter could locate them I would permit him to step to the side bar with you and read them to you. Is that what you wish?

MR. THAU: Yes.

THE COURT: Mr. Reporter, do you have them?

(The reporter indicates to me that he doesn't

have the material.

MR. THAU: Perhaps they can be secured during the lunch hour.

MR. REILLY: I will object to this.

THE COURT: Your recollection will have to govern at this point, sir. You don't have the transcript.

MR. THAU: I can't testify at this proceeding.

THE COURT: You are going to have to ask your questions.

Q It is your present assertion, Miss Rivera, that never in this courtroom did you say -- a few days ago -- that the observations you made of the male and female standing on the other side of the counter were made by you when you were sitting down; you never said that?

A Sitting down? No, unless I misunderstood you when you were asking me the question, if you did; but sitting down is out of the question. No. Standing up, yes, not sitting down. Is that clear enough?

Q Did I interrupt you?

A I said am I clear enough?

Q Very clear.

You misunderstood my questions a few days ago, Miss Rivera?

MR. REILLY: Objection, your Honor.

THE COURT: Sustained.

I will direct the court reporter to obtain the stenographic minutes and read them to counsel at the recess and counsel can make whatever use of them he deems appropriate.

Q You stood up as soon as you saw your colleague under the counter?

A No.

Q How long did it take you to stand up after you saw Miss Churilla under the counter?

A I got up because I had a telephone call. I always have the tendency of looking towards the side. That is when I noticed it.

Q Is your telephone on your own desk?

A No.

Q And you must get up to answer a phone?

A Yes.

Q Did you ever see the two persons on the other side of the counter while you were still seated down?

A No.

Q Is this a swivel chair on which you sit.

A Yes.

Q Did you stand up as you saw your colleague under the counter or before?

A If I stood up?

Would you repeat that, please?

Q When you first saw -- what is her name? -- Churilla --

MR. REILLY: Charlene Churilla.

Q When you first saw Charlene Churilla under the counter were you seated or were you standing?

A I was standing.

Q And did you remain standing from then on until the two visitors had disappeared?

A No.

Q Did you sit down again?

A No, I picked the phone up. Then I sat down.

Q When you sat down again, were they still standing right against --

A Yes.

Q They were?

A When I was standing they was there. When I was seated, they was there.

Q When you sat down again they were still there?

A You know, you are confusing me. Would you be clear?

Q Surely.

You stood up and you saw them; right, the two

persons on the other side of the counter; is that right?

A Right.

Q How long were you standing?

A I don't know.

Q You don't know how long you stood?

A No.

Q Did you estimate in a certain time sequence for Mr. Reilly a moment ago?

A Repeat that, please.

Q Mr. Reilly asked you how much time you observed these two people on the other side of the counter.

A He said seconds or minutes. I assume it was minutes. I don't keep track of time.

Q You assume or do you estimate?

A That was a few minutes, how long, I don't know.

Q A few minutes? Okay.

When I say start, please figure out in your own mind that you first are looking at them and when I think that enough time has been past for your observation -- in other words, when the length of time you saw them has elapsed, you say stop.

Okay, go.

A You know, you are being very unfair because I really don't know.

Q Has enough time passed yet? It is now exactly a minute. Did you see them for longer since I said, "Go," or less time than that?

A I don't know.

Q Miss Rivera, are you suffering from anything? I don't mean to be sarcastic, but the witness keeps shaking her head.

THE COURT: You asked the question. I'm going to let her answer it.

MR. THAU: Yes.

THE COURT: Go right ahead and tell him.

A You're getting me too upset. You're getting me nervous.

Q Was Mr. Reilly geting you upset?

A No.

Q Was it during Mr. Reilly's examination that you had to retire to compose yourself or during mine.

Withdrawn.

Miss Rivera, I show you Exhibits 2 and 3 and I ask you whether that fairly represents that portion --

A I don't want any more. Please leave me alone.

THE COURT: Miss Rivera, compose yourself, please. We all know that you are upset. Counsel is entitled to ask you questions. I will ask you to compose

yourself at this time. Take a moment.

Miss Kruger, get her some water.

(Pause.)

THE COURT: You may proceed, Mr. Thau.

Q Please look at the two pictures in front of you, Exhibits 2 and 3. Do those pictures fairly depict that part of the counter we have been talking about?

THE COURT: As it looked on February 25, 1976.

A He was on this side. She was on the other side.

THE COURT: Do the pictures fairly describe the appearance of the counter at the bank as it looked on February 25, 1976?

THE WITNESS: Yes.

Q On one of the pictures, Exhibit 2, you see two persons standing on the customer's side of the counter, don't you?

A Yes.

Q Will you speak loud enough so the jury can hear you?

A Yes.

Q Do you know where the surveillance camera is located in that bank?

A Right next to the door.

THE COURT: Right next to the door.

Q That would be on the opposite side of where you were; right?

A Yes.

Q And the photo looks towards where you are sitting or where your station is; is that correct?

A Yes.

Q And Exhibit 2 shows two persons against the counter facing the teller, if there were a teller there; is that right?

A Yes.

Q Will you please show us that picture, Exhibit 2, where you appear?

A Here.

Q Do you see yourself here?

A I'm all the way back here (indicating).

THE COURT: Pointing behind a raised partition here.

Do you want her to put an X there?

MR. THAU; May I see it?

THE COURT: Yes, of course.

Q Do I understand that you are not shown on the photo? You just say that you are behind a wall; is that what you say?

A Yes, of course.

Q Would you say, judging from what you know of the physical setup there, that if you were standing up. not seated but standing up at the time the photo was taken any part of your head would show on that picture?

A Yes, but I'm all the way next to the corner.

Q I'm asking you whether given the height of these partitions, your head or any part of you would be visible if you were standing up at the time these two photos were taken?

A I wouldn't be visible to the camera, no.

Q It would not.

Did Charlene, your colleague, say anything from the time you first saw her crouch to the time you no longer saw the people on the other side of the counter?

A No.

THE COURT: This is the third time the question has been asked, but I'm going to let it be asked again.

A No.

Q Did you at any time say to the FBI agents who interviewed you that Charlene had yelled three times "He's got a gun"? Did you ever say any such thing to any FBI agents?

A I don't recall that.

Q So your present --

A Unless she said that when she was gone. If she said something, I don't remember hearing a thing.

Q My question to you is whether you ever told an FBI agent, Agent Alan DiBono, that Charlene had yelled three times "He's got a gun"?

A No.

Q You never said that?

A No.

MR. THAU: May I have a moment? We may save some time, your Honor.

THE COURT: Take as much time as you require.

(Pause.)

MR. THAU: I would ask the Court to direct the Government to make --

MR. REILLY: Objection, your Honor. If he wants to make an application --

THE COURT: He said something he is not supposed to, you know it.

MR. THAU: I object to that. Your Honor is ikpugning my integrity.

THE COURT: Since you did something you knew you were not suggested to I'll see you at the side bar.

The jury will disregard any exchange betwe en

the Court and counsel.

(At the side bar.)

MR. THAU: I had asked for a short pause to get a stipulation which is often done between counsel. We stipulate to a variety of things. Since DiBono has in his report that this witness told him that "Charlene said three times he's got a gun," all I want to know is whether the Government would stipulate that he would testify that this witness said that to him.

THE COURT: I have no fault to find with that. When he apparently did not accede to your request he knew it was inappropriate to stand up and in a loud voice proclaim what you did in the presence of the jury.

MR. THAU: It wasn't a proclamation.

THE COURT: It was. You are not here to testify.

MR. THAU: I wasn't going to.

THE COURT: You did to all intents and purposes. I told the jury to disregard the exchange. I trust that will put an end to the matter. In the future if you have any requests to make please ask for a side bar and I will grant your request wherever appropriate. If you want Agent DiBono made available I would ask the Government is the agent in New York City and, thus, could he be made

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available.

MR. REILLY: Your Honor's, he's in New York City on surveillance. I have asked that he testify this afternoon in connection with something else. He told me that he would like to have another agent do it who is capable of testifying. He can be reached. We can make him available if Mr. Thau wishes to call him.

THE COURT: Yes, if you wish to call him as a defense witness you may do so. Please make him available for that purpose.

Anything further, gentlemen?

MR. MITCHELL: I may be wrong, but I have a note when she was on the stand previously that she said the other witness had yelled this thing out three times.

MR. THAU: That is right.

(Pause.)

THE COURT: I remember saying that the male of the pair was pounding on the station yelling three times "Come on, come on, come on."

I have no note and I have no recollection myself of Charlene Churilla having been heard by this witness to yell anything out three times. That doesn't mean it didn't happen. I have searched my notes, which I tried to keep, and I don't find anything.

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no foundation for that question.

MR. THAU: How about the business of standing up?

THE COURT: I can't recall the exact contention of that. I do recall that she was seated at her desk at one point. I recall the matter of her heels coming up. As a matter of fact, she would be the same height sitting down with or without the heels. I remember that.

MR. THAU: Do you remember my making the point that from a seated position she couldn't possibly see the heads. That is why I wanted to visit the scene. She now says that she never saw these people until she stood, which is a substantial difference.

MR. REILLY: She said she turned, answered the phone and stood up immediately and that is when she saw the people. Mr. Thau's examination at the hearing was all based on him saying to her:

Now, when you are sitting down what is the height? He did not lay the basis. He did not make certain that she had never stood up.

MR. THAU: I did.

THE COURT: I have indicated and instructed the reporter to obtain his tape during the recess and advise you of what was said.

MR. THAU: Thank you.

Charlene discussed it, didn't you?

THE COURT: Anything further, gentlemen?

MR. MITCHELL: I have one or two questions.

MR. THAU: I, frankly, would like those tapes to resume the cross-examination.

MR. MITCHELL: I have two or three questions.

MR. REILLY: I think this is such an absurd point -- Mr. Thau has not established to my satisfaction, and I don't think to yours, that she was sitting down at all times.

THE COURT: It is 11.30. We will take our mid-morning recess at this point.

(In open court.)

THE COURT: Ladies and gentlemen, there is another matter which we are going to take up for a few minutes. We'll take our mid-morning recess now for ten minutes.

As I send you out, please do not discuss the case among yourselves. Keep an open mind on all facets of the case until the case is concluded and given to you arter my charge.

The jury is excused.)

(Recess.)

THE COURT: I would like the record to reflect that during the recess the court reporter obtained his

stenographic notes and has read the portion requested by Mr. Thau to counsel and we have agreed we will now resume the trial. The jury will be placed back in the box. The witness will be recalled and Mr. Thau together with the court reporter will read certain designated questions and answers.

Is all of this procedure which I have just outlined, that is, our having gotten the notes and our following the procedure outlined, satisfactory to both defendants?

MR. THAU: It is, your Honor.

MR. MITCHELL: It is.

THE COURT: Mr. Reilly, do you want to add anything?

MR. REILLY: No. No objection.

THE COURT: Bring in the jury.

(Jury present.)

THE COURT: Ladies and gentlemen, we are going to resume now. I requested the court reporter to obtain the notes that were referred to previously and Mr. Thau will now resume his cross-examination of Miss Rivera.

MR. THAU: Thank you, your Honor.

May it be clear, your Honor, when you said the notes that you were referring to the stenographic verbatim

notes?

THE COURT: That is correct.

MR. THAU: Thank you.

BY MR. THAU:

Q Miss Rivera, you testified in this courtroom a few days ago concerning the events we are discussing; is that right?

A Yes.

Q You were telling us today that the first time you saw the two persons on the other side of the counter is after you had stood up; is that correct?

A Yes.

Q And that at no time did you see them while you were seated; is that right?

A Yes.

Q Now, in an instant the court reporter will read certain questions and answers and my question to you now --

MR. REILLY: May I may object? I think there is a misunderstanding in the record. Mr. Thau is talking about a period of time that she was seated and I don't know whether it is clear to the witness when she was seated before she turned around to stand up or after.

MR. THAU: I will clarify it. I will try.

Q Miss Rivera, immediately before you saw Charlene

under the counter you were seated at your desk facing the wall opposite the counter, is that right?

A When I was seated?

Q Before you saw Charlene crouched under the counter, you were seated; right?

A No, I was standing up.

Q Some time before that you had been seated?

A Some time before?

Q Yes.

A After I answered the phone I noticed Charlene. When I tried to activate the alarm, that is when I tried to sit down. It was only a matter of seconds. It wasn't that I was seated all the time.

Q What got you up -- the telephone ringing?

A Excuse me?

Q What got you up, the telephone ringing?

A Yes, right.

Q Because you couldn't teach it from your desk?

A Right.

Q Where is the telephone located with respect to your desk? Let's say you were seated at your desk facing the wall with your back to Charlene. Where is the telephone?

A There is another counter on that side where all

the machines are -- right next to one of those machines.

Q To your left as you are seated?

A Right. I have to stand up to answer the phone.

Q It rant and you stood up?

A Yes.

Q Is it at that time that you saw Charlene crouching?

A When I picked up the phone to answer it, like I said, I had only had time to look at the side. That is when I saw Charlene.

Q Did you have a chance to actually get to the phone?

A To say hello? No. I took it in my hand and went like that (indicating).

THE COURT: Holding her left hand to her left ear.

Q How far from that watl to the right of you is that telephone?

A From the wall where my typewriter was?

Q Yes.

A I really don't know.

Q How far from your desk? Maybe around -- because the typewriter is all the way in the corner.

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It ia round that much, I guess (indicating).

THE CCURT: Indicating three feet.

Q About three feet? That is what, from your typewriter or from the wall?

A From the typewriter to the phone.

THE COURT: Indicating about three feet.

Q Miss Rivera, I bring you a piece of paper. Would you look at what I'm doing? Let's say this is the top of the counter; right? And you are looking at it from the ceiling. This is the wall.

A Right.

Q This is the front of the counter where customers come; right? This is where Charlene would stand at her station; right?

A Yes.

Q So far so good.

Now, This is the back wall over here; right?

A Yes.

Q Would you draw where your desk is?

A I have a cabinet over here and my desk is right over here like that. I have a typewriter on top of this cabinet.

Q When the phone rang, where were you seated?

A I was over here (indicating). Over here

is that counter where the machines are. I went, I moved my chair up to here, around here, not too close to the desk and I --

Q Speak louder.

A I moved my chair not to close to the desk. I got up and that is when I picked up the phone.

Q Where is the phone?

A All the way over here (indicating).

Q It is on the other side of the desk; right?

A Right. The desk is close to where the counter is where the machines are this close.

THE COURT: Would you right desk where the desk is?

THE WITNESS: Yes.

7 Q And write telephone where the telephone is, please?

A Yes.

THE COURT: And the typewriter where the typewriter was located.

Q Does the telephone rest on your desk or does it rest on the other side of your desk?

A No, on my desk.

Q It rests on what?

A On the cabinet, on the counter.

Q You have to get up and go around your desk to go the phone?

A No, I stand up.

Q You can reach over?

A Right.

Q How far is the wall from the inner edge of your desk; about how many feet or, if you can show us distances here, we can estimate. From where you are seated to where?

A From here to this point over here, to where she is sitting.

Q From the edge of this?

A To where she is sitting.

Q This first lady here?

THE COURT: First juror.

Q Say five feet or four feet?

A I assume four feet. You are talking from where my desk is to the wall?

Q Yes.

A Yes.

MR. THAU: From this lady to this is about five feet, Mr. Reilly?

MR. REILLY: Yes, that is right, more or less.

Q So that this distance is five feet; is that

right?

A Yes.

Q Now, as you were looking at the two persons on the other side of the counter, were you standing close to your desk?

A By close you mean right at the edge?

Q Yes.

A No, about like this.

Q About a half a foot away from it?

A After I pick up the phone, because I have to lean over and probably it was like that.

Q Were you holding on to the phone at all times when you were looking at this man and woman?

A Yes.

Q Is there a long cord on that phone?

A Yes.

Q You were basically standing against your desk or close to it as you were making these observations; is that right?

A Yes.

MR. REILLY: Does Mr. Thau want to mark that at least for identification?

THE COURT: Yes, that will be Defendant Debra Green's Exhibit A for identification.)

(Defendant Debra Green's Exhibit A was marked for identification.)

MR. THAU: I offer it in evidence, your Honor.

MR. REILLY: I have no objection.

THE COURT: Received.

MR. THAU: Thank you.

(Defendant Debra Green's Exhibit A was received in evidence.)

Q A few days ago in this courtroom, Miss Rivera, do you remember my asking you these questions and you remember your giving me these answers?

At this time I would ask you to listen to what the court reporter is going to read.

(Record read.)

Q Miss Rivera, did you listen to the reading just done by our reporter?

A Yes.

Q And did you hear the reporter read an answer:

"I was sitting down as I was looking at these people"?

Do you remember saying that a few days ago in this courtroom?

A Yes.

Q And today you tell us that all times when you

looked at them you were standing; is that right?

A Yes.

Q And you said also a few days ago, did you not, that when you finally stood up they were already gone, these two people; is that right?

A Yes.

Q And before our break you told us, didn't you, that in fact you had never said such a thing as I suggested you did say a few days ago?

A Yes, I do recall that.

Q Did you before the break remember having testified otherwise a few days ago or didn't you remember having testified?

A Would you please repeat that again?

Q Before the short recess when I asked you whether you had testified differently a few days ago, did you remember that you had testified differently or didn't you?

A After I went in there I noticed that I -- yes, I said something different.

Q After you went in there?

A Back there.

Q In the room behind you, the Judge's robing room?

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A Yes. When I actually told you there is actually what happened. I was kind of confused. You was confusing me.

Q When you say you told me what happened, are you referring to what you told us today or what you told us the other day?

A What I told you today.

Q Were you confused the other day, Miss Rivera?

A Yes, I was.

Q When you said, "I was sitting down as I was looking at these people," did you have a visual image in your mind of what --

A I actually was standing up. I really don't know why I said sitting down. The way you was talking to me it was confusing me.

Q How about when you said later on:

"When I stood up they were already out"?

A I was seated around half a second when I tried to activate the alarm. It wasn't that I was sitting all the time.

Q What I am asking you is whether you were confused three or four days ago when you told us under oath:

"When I stood up they were already out."

MR. REILLY: Objection, your Honor. There is

A I remember, not having any customer at the

no foundation for that question.

THE COURT: Do you recall saying that?

THE WITNESS: Yes, I do recall that.

MR. REILLY: My objection goes to the fact that she says she was sitting down --

THE COURT: I will permit the question.

Q Did you hear the question, Miss Rivera?

THE COURT: Do you want it repeated?

A Yes.

Q Later on in your examination a few days ago when you told us under oath:

"When I stood up they were already out the door,"

were you confused when you said that?

A When I was saying those words?

Q Yes.

A Because I sat down for a couple of seconds, like I say, when I tried to activate the alarm. That is when they tried to walk out. I got up right away to see where they was going.

Q Of the woman all you saw were the eyes; is that right?

A The eyes and the top of her shoulders.

Q Miss Rivera, after the incident itself you and

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Charlene discussed it, didn't you?

A After?

Q Yes.

A No, I did not discuss it with Charlene.

Q You did not discuss with with Charlene?

THE COURT: That is after the thing at the bank on February 25th.

At any time after that did you talk about it with Charlene?

THE WITNESS: No.

Q Charlene had just been the victim of an attempted robbery and you had seen at least a piece of the persons who had done it and there you were four or five feet from her and there was no talk between you about this incident?

A No.

Q How long more that day did you and Charlene stay together?

A What?

Q How long after this incident did you and Charlene Stay in each other's company?

A When the FBI came over, that is when we was together there. I went downstairs. She stood with the boss, Mr. McFadden. I went out to lunch. One of my customers -- where she was, I don't know. I came back

and I went home and she stayed at the bank.

Q How long after the incident did the FBI come?

A Maybe 10 or 15 minutes, I think.

Q And in those 10 or 15 minutes weren't you two ladies together?

A No, I was with the head teller. She was with Mr. McFadden.

Q Since this incident, that is, between the incident of February 25 and today, you continued working with Charlene, haven't you?

A Yes.

Q And you are colleagues and friends; is that right?

A Yes.

Q You have discussed this incident with Charlene, haven't you?

A No.

Q Never, not once?

A The only time we talked about it was when the FBI came over and then when Mr. Roach or whatever his name is came with the subpoena. We was wondering why we had to come down here. We didn't discuss anything about the robbery.

Q Nothing?

A A week or so later they moved me all the way down. Someone else next to her. I'm not next to her any more.

Q No one told you you had no right to speak to Charlene about it, did they?

A No.

Q Sort of an unusual --

THE COURT: Sustained; form.

Q Would you say that it is an unusual and remarkable event --

A I refused to talk about. I just wanted to forget it as soon as possible.

Q In other words, people would come to you proposing to discuss it with you but you would put them off saying, "I refuse to talk"?

A Right, I just don't want to hear. Other people from the bank came over, even customers came over to find out what has happened, right? I just refused. It Charlene ever said something, I don't know.

Q Did you ever hear the woman on the other side of the counter say anything on February 25?

A No.

Q Aside from standing there and perhaps walking

away, did you ever see her do anything?

A No.

Q Did you say that the male of this pair was slapping the top of the counter?

A Yes.

Q And by slapping do I understand that you mean with the palm of the hands?

A Yes.

Q Both hands?

A Yes.

Q How many times, about?

A Around three or four times.

Q Did you hear him say anything?

A Only "Come one, come on." That is all I heard.

Q What kind of surface is there on the top of the counter where a customer can slap?

A I don't understand what you mean by --

Q All right.

Is the top wodd, glass or marble or any other substance?

THE COURT: If you know.

A I really don't know what it is. It is certainly not glass or marble. It is not wood.

Q Is it smooth?

A Yes.

Q Miss Rivera, I show you Exhibits 2 and 3 once again and I call your attention to what looks like, to me at least, perhaps a calculating machine between the two heads at the counter.

Do you see this device here?

A Yes.

Q What is it, a calculating machine?

A It is an adding machine, yes.

Q With reference to this first adding machine, that is the first one from your left margin, the one between the heads of the people, where is that telephone?

A The machine is here further down (indicating).

Q Over the head of this person to the right, something like this?

A No, this is the machine. The telephone would be like that, in between.

Q Over here?

A Yes.

Q Over here (indicating)?

THE COURT: Don't mark it yourself. Please do not mark the document yourself.

Now you have done it.

A Five or six times, because I haven't seen her

MR. THAU: I'll erase it.

THE COURT: I think you should immediately. I want the witness to mark the document where it is and not you.

Q Please mark where the telephone might be?

A Right here.

THE COURT: Not above the line, is that correct, where Mr. Thau has marked something which can't come off; is that right?

THE WITNESS: Yes. That is the wall. This is the counter.

Q I'm interested particularly in the distance from that wall. The telephone is around where you marked it; right?

A Yes.

Q And where would the inner end of your desk be on this picture?

THE COURT: Can it be seen in the picture?

THE WITNESS: No.

Q About where would it come against that wall?

A There is some cabinets over here, so I guess right in between, over here (indicating).

MR. THAU: Thank you very much, Miss Rivera.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Tell me, there was a trainee in the back at that time, Mr. White; is that correct?

A Yes.

Q Did you know him?

A Did I know him?

Q Did you know him at that time?

A Yes.

Q Did you discuss this attempted robbery with him?

A No.

MR. MITCHELL: I have no further questions.

REDIRECT EXAMINATION

BY MR. REILLY:

Q Miss Rivera, did you seek medical assistance after this bank robbery?

A Yes, I had to go to the doctor.

Q Do you know what type of doctor that was? Was it a psychiatrist?

A No, just a regular medical doctor. She would give me some kind of tranquilizer.

Q Was this to calm your nerves?

A Yes.

Q Was this to calm your nerves?

A Yes.

Q As a result of this bank robbery, was this something that you wish to forget?

MR. MITCHELL: Objection.

THE COURT: The witness is shaking her head in the affirmative in the sight of the jury. I'm going to let it stand.

MR. MITCHELL: Will your Honor instruct the jury to disregard it? I think it is prejudicial.

THE COURT: If you think they will disregard it I'll accede to your request.

Ladies and gentlemen, disregard it.

MR. REILLY: She answered it.

THE COURT: Mr. Mitchell wanted it disregarded.

I ask the jury to disregard the nodding of her head.

Q Miss Rivera, a few last questions.

A I'm listening.

THE COURT: You may proceed.

Q I suggest you review for us once again the sequence of what occurred when you went to pick up the phone.

Were you standing when you went to pick up the

phone?

A Yes.

Q Did you then turn towards the teller's counter?

A When I picked up the phone I turned.

Q Then what did you do?

A After I looked at Charlene under her station I looked up. That is when I noticed the male and the female. I just stood there. I didn't move for a few minutes. Then I tried to sit down to see if I could reach towards where the alarm was.

Q Did you reach the alarm finally?

A Yes. I activated the alarm. When I pulled like that, I guess he noticed my arm (indicating).

MR. MITCHELL: Objection.

THE COURT: I will sustain that.

She pulled like that and then something happened. What happened?

THE WITNESS: I guess he noticed my arm then when I pulled and that is when he walked out.

THE COURT: I ask the jury to disregard "and I guess he noticed my arm when I pulled."

The witness has indicated she made a certain motion and that thereafter "he walked out."

That is what the jury can consider, nothing else.

Q At the time you were standing did you still have the phone in your hand?

A Yes.

Q And it was at that time that you were observing the male and the female who were in the bank across from the teller?

A Yes.

MR. REILLY: Thank you. No further questions.

MR. MITCHELL: No.

THE COURT: Mr. Thau.

RECROSS EXAMINATION

XX BY MR. THAU:

Q You just told Mr. Reilly you went o see a doctor and to see if that doctor might give you tranquilizers?

A Yes.

Q Is that right?

A Yes. I didn't get to see the doctor. She was at a meeting.

Q So that no tranquilizers were even given you?

A Oh, I had some Valiums home.

Q You had some Valium at home from before; is that right?

A Yes.

Q What happened?

Q How long did you have the Valiumes before February 25?

A I guess around a year or so ago.

Q Had those been prescribed for you by a doctor?

A Yes.

Q A general practitioner?

A He was my GYM doctor.

Q Were you taking the Valium during the year?

A No, only when I used to get upset.

Q Nervous upsets?

A Excuse me?

Q You were nervous?

A Yes.

Q Now Valium is a tranquilizer, isn't?

A Yes.

Q It is not going to kill either pain or an infection; is that right?

A No.

Q What dosage was prescribed for you before this incident?

A I don't recall. I really don't know.

Q Did you have any Valiums left when this incident occurred or before?

A Yes, I must have had around six or seven pills

that day?

left.

Q Did you take any of them?

A Yes, I took one that day.

MR. THAU: Thank you.

THE COURT: Any further questions of this witness, gentlemen?

MR. MITCHELL: No, your Honor.

MR. REILLY: No, your Honor.

THE COURT: Miss Rivera, you are excused. Thank you.

(Witness excused.)

THE COURT: Mr. Reilly.

MR. REILLY: The next witness is Gene White.

- -

A Dark pants and a white trench coat.

mcs

GENE THOMAS WHITE, JR., called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. White, where are you employed?

A I'm employed at the Manufacturers Hanover Bank on Fifth Avenue and 18th Street.

Q What is your position there?

A I am a management trainee working in the note tellers department.

Q As part of the management trainee program do you go from bank to bank in various capacities?

A Yes, I do.

Q Directing your attention to February 25, 1976, were you working then at the branch located on Sixth Avenue and 47th Street, which is 1186 Sixth Avenue?

A Yes, I was.

Q In what capacity were you working there?

A I was a paying and receiving teller.

Q Durecting your attention to that date, do you remember seeing an attempted bank robbery at the branch?

A Yes.

Q Tell us what you recall about it?

mcs White - direct

A I remember, not having any customer at the time, and as is customary I was just sort of looking around the bank, and I noticed that the teller at the first station, which was approximately 12, 15 feet -- I'm not very good at judging distances -- but anyway it was the first teller had customers, two, three, actually. I also noticed at that time a woman who was standing at the table, the tax table. We have a table set up during income tax time with forms on it. She had been standing there for a while and when she went over to Miss Churilla, the teller's station, and I just kind of glanced down, not having anyone or anything to do with the time, and thought nothing unusual until it seemed that Miss Churilla was having some exchange over what appeared from where I was sitting to be a check. Ordinarily if a customer hands you a check then you go and process it unless there is something wrong and you send the person out. There didn't seem to be any movement happening. She was just standing there holding on to it, did not seem to be able to get it.

MR. MITCHELL: That is a conclusion.

THE COURT: Yes, I'll strike "did not seem" and the words that follow it.

Go ahead, sir, and tell us what you saw.

A At that time I saw -- I noticed a gun and pulled my alarm, and then turned to see if the guard was on the floor, the banking floor, which he was not, and as I turned back around I noticed that Miss Churilla had gone to the floor and the man and woman had gone out.

Q You said you noticed a gun. Who was holding the gun?

A The man.

Q When did you first observe the mn?

A Actually Miss Churilla, I believe, had one or two customers and the man was standing next to her station while the customers were being processed, and I really didn't take that much notice because I thought he was waiting for one of the people in line.

Q Did there come a time when you took notice of this male?

A Yes.

Q When was that?

A When I saw the gun, actually. That is when I really felt at that time that something was wrong.

Q Where was he holding the gun and where was he pointing it to?

A Well, his arms were on the counter sort of like this and the gun was in this hand (indicating).

THE COURT: Indicating the right hand.

A Yes, under this way and the way it was pointed was pointed directly to me, which is partly the reason I noticed it.

Q Did you get an opportunity to look at the male at that time?

A Yes.

Q Do you see the mail who was holding the gun in the courtroom today?

A Yes.

Q Will you please point him out?

A Sitting at the back table, second from the right.

Q How is he dressed?

A He had a short coaton.

Q How is he dressed today?

A Brown shirt and brown tie.

THE COURT: Indicating Mr. Green.

Q Did you get an opportunity to observe the female when she was in the back?

A Not really. Most of the time that she was there I just saw her back or part of her side, so I really didn't get a really good image of her.

MR. REILLY: No further questions.

mcs White - cross 149

CROSS EXAMINATION

BY MR. MITCHELL:

Q Tell me, Mr. White, did you discuss the holdup after the holdup with the teller that was held up or anybody else in the bank?

A Yes.

Q Did you discuss it with Celinda Rivera?

A Yes.

Q What did you discuss with Celinda Rivera about the holdup?

A What did we discuss?

Q Yes, what was the discussion?

A Just about what had happened. We --

Q Did you say that the man wore something and she said something? I mean, was there a discussion about clothes of the male individual?

A Yes, we did have a discussion about that.

Q You did have a discussion.

Did you have a discussion with Charlene?

A Charleen?

Q Charleen. Did you have a discussion with her?

A Yes.

Q Did you tell her what you saw and did and did

she tell you what she had observed?

A Yes.

Q I am going to show you Government's Exhibit in evidence and ask you whether the individual at the counter, the fourth stationed remote from Charlene's is yourself?

A Yes.

Q At that point where are you looking?

A I was looking -- I think I was looking for the guard, facing that way.

Q You were facing away from what was supposed to be the holdup?

A Yes.

Q Tell me this: In your discussion with Miss Rivera did she tell you what she was doing during the holdup?

A What she was doing during it?

Q Yes.

A No.

Q Did she tell you anything about ducking down under the counter?

A No.

Q Did you see her during the holdup?

A I saw her at one point when she was sitting at her desk, but I don't think I really looked at all during

that time.

Q And did you activate the alarm?

A Yes, I did.

Q And do you remember what the man was wearing?

A From where I was sitting it appears to me to be a short coat. I could only see from the waist up. In the way it was designed at the top, it looked like a short coat to me, a cloth coat, dark color, and my mind has some reason, some image of a plaid, a dark plaid of some kind, with no hat.

Q Did you see the man when he walked out?

A No, I just sort of got the back.

Q The back?

A Since they were leaving.

Q Did you notice a fur collar on the jacket?

A No.

Q Was there one?

A No, I don't believe there was.

Q There was none.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Mr. White, on how many occasions do you say you discussed your observations and her observations with

Miss Rivera?

A Five or six times, because I haven't seen her that much since that time.

Q Do the five or six include perhaps the very day of the occurrence?

A Yes.

Q You are familiar generally with the physical layout in back of the counter where Charlene worked and where Miss Rivera worked and where you worked; is that right?

A Right.

Q You know that Miss Rivera in those days had a desk located somewhat behind Miss Churilla?

A Right.

Q Are you familiar with a certain telephone which would be used by Miss Rivera in those days?

A Yes.

Q You know where it is located?

A Yes.

Q I show you Government's Exhibit 3 in evidence. Do I understand that if you face a customer at your counter there is a wall at the left end of the teller's counter; right?

A Yes.

Q How far would you say that telephone is, the one Miss Rivera would use, from that wall?

A I actually don't know. As I say, I"m very good at judging distances and I'd say maybe four feet or five feet.

Q You remember whether the woman of this pair was closer to you or further away from you as these two people were at the counter?

A Closest to me.

Q Closest to you? And you told us that this revolver which you saw was pointed in your direction?

A Yes.

Q And that would mean also pointed in a general direction of the woman if they were both at the counter, would it not?

A Yes, more or less.

MR. THAU: Thank you, sir.

No further questions.

MR. REILLY: NO questions.

THE COURT: Thank you very much, Mr. White, you are excused.

(Witness excused.)

MR. REILLY: The Government's next witness is Donna Morrison, your Honor.

THE COURT: Donna Morrison, please.

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DONNA RAE MORRISON, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Miss Morrison, where are you employed now?

A Bankers Trust on 55th and Sixth Avenue.

Q In what capacity?

A Teller.

Q On March 8, 1976 were you working for Bankers Trust?

A No.

Q For whom were you working?

A The National Bank of North America.

Q What capacity?

A Teller.

Q At what branch?

A Branch 38.

Q Do you know what the address is?

A 515 Seventh Avenue.

Q Near what cross street is that?

A 38th Street.

Q Did you go to lunch that day?

A Yes, I did.

Q About what time?

A Probably about a quarter of 11.

Q What time did you return from lunch?

A A quarter to 12.

Q Did anything unusual happen after you returned from lunch?

A Yes.

Q Tell us what

A I had just come back from lunch and all the other tellers were on one side of the lineup and they were arguing, so I called some people over to my line and the first people who came over held me up.

Q Just describe what happened when you say that you were held up. Just give us a little bit more detail as to who came over, what did they look like,what did they do, what did they take?

A Two people came over, one black female, one black male. The woman held up a note.

Q Do you recall reading the n te?

A Yes.

Q What do you recall the note saying, to the best of your recollection?

A "This is a stickup, give us all your money. We have a gun."

Q Did she hand you the note?

A No, she just held it up in her left hand.

Q Did you indicate there was a black male with her?

A Yes.

Q Where was he standing?

A To her right.

Q What if anything did he do and say?

A He took a gun out of the inside of his coat and held it up for --

Q What did he say, if anything?

A I started to reach the buzzer. He told me not to do anything.

Q What did you do?

A I just gave him the money.

Q Where did you get the money from?

A My top drawer.

Q Do you recall approximately how much money you gave him?

A $1400.

Q After you gave him the money, what happened? Who took it, first of all?

A The man.

Q What happened?

A They walked out of the bank and I thought I pulled the alarm. I didn't do it right, but then I yelled for my head teller.

Q How much time passed between the instant when these two individuals came to your counter and when they left?

A Less than two minutes.

Q Was there any obstruction between you and them at the tellers counter?

A Yes, the counter, which the people pass over money.

Q Did that obstruct your view of the two individuals?

A No.

Q Where were you looking during that period of time?

A I was looking at both people.

Q Do you recognize the black male who held you up that day?

A Yes.

Q Would you please point him out?

A Seated at the table, second from my right.

THE COURT: What is he wearing.

THE WITNESS: Brown- tie and tan suit.

THE COURT: Indicating Mr. Green.

Q Do you recognize the female who held you up that day?

A Yes.

Q Point her out?

A The female sitting at the table with the apricot dress on.

THE COURT: Indicating Mrs. Green.

MR. REILLY: No further questions.

CROSS EXAMINATION

XX BY MR. MITCHELL:

Tell me, Miss Morrison, did the male who held you up speak to you?

A No, he just told me not to press my buzzer, not to do anything.

Q Did he speak to you then?

A Yes.

Q Were you looking at his face when he spoke to you?

A Yes.

Q Did you notice anything peculiar about his teeth?

A No, I didn't.

Q Did you notice his tooth was missing?

A No, I didn't.

Q Do you recall what he was wearing?

A Dark pants and a white trench coat.

Q Where did he take the gun from?

A He took it from his left side, inside coat pocket.

Q In other words, under the trench coat there was another coat?

A On the inside of the trench coat on his left side.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Miss Morrison, where was the female when you first took note of her?

A Excuse me?

Q Where was the female when you first saw her?

A As I was looking toward her, she was on my right -- as I was looking towards them.

Q On your right at your counter?

A Yes.

Q That is the first time you saw that woman?

A Yes.

Q Did you ever tell an FBI agent that when you first saw her she was some place in the center of the bank

and that she didn't come to your station until about half a minute later?

A No.

Q You never did?

A No.

Q Do you remember Special Agent Quinn from the FBI?

A No.

Q You were interviewed by FBI agents, weren't you?

A Yes.

Q Do you know the names of each of the agents who interviewed you?

A No.

Q And you were interviewed the day of the incident, weren't you?

A Yes.

Q Did you give a written statement to them?

A What I said was written down and then I signed it.

Q The signed statement you are referring to is not the one you gave the day of the incident, is it? It is one that you signed on a subsequent vist by the FBI agents; is that right?

A I don't remember the exact date.

Q Did you ever get your hands on that note which you say the woman was holding up?

A No.

Q So there was never a pulling on your part and a resisting on her's for possession of that piece of paper, was there?

A No.

Q Do you remember what size that note was?

A Like an index card, 5 by 7 or I think that is he size.

Q Do you remember the color?

A It was orange.

Q She just held it up there?

A Yes.

Q Didn't speak a word?

A No.

Q Didn't have a weapon?

A No.

Q Didn't get the money?

A No.

Q As they were facing you, who was on which side?

A The woman was on my right and the male was on

my left.

Q And you say he held a revolver?

A Excuse me?

Q He held a gun?

A Yes.

Q In which hand?

A In his right hand.

Q Was it resting on the counter?

A Not really. It looked like it was, but he didn't have his hand on the counter.

Q Were surveillance cameras in your bank, Miss Morrison?

A Yes, there are.

Q Are those activated when you either press a buzzer or when certain moneys are withdrawn from a drawer?

A When you pull the alarm.

Q Did you pull it?

A After they had gone.

Q After they had completely disappeared from the premises?

A When they first left I thought I pulled it, but I didn't do it right.

Q When did you notice that you had not done it right?

A The police had not come within minutes. They took a while, so I had to pull it again.

Q Is there such a thing besides the alarm you told us about as a second triggering device which is operated by the removal of what is known as bait money from the bottom of the drawer?

A No.

Q There is not in that bank?

A No.

Q Are you familiar with .what I'm talking about? It is just that none existed in that bank?

A No.

Q When the police arrived were you asked to give a description of this couple?

A Yes.

Q And you were asked to put together a composite sketch of each?

A No.

Q Do you know what I mean by a composite sketch?

A Yes.

Q Do you recall saying of the woman that she had long braids and her hairdo was done in long braids?

A Yes.

Q How long were those braids?

A Shoulder length.

Q All together, how long were these two persons in front of you?

A Less than two minutes.

Q Was your attention riveted on the gun, would you say, at any time during those two minutes?

A Yes.

Q Was your attention riveted on the index card at any time?

A Just a little bit.

MR. THAU: Thank you.

MR. MITCHELL: I have a few, your Honor.

CROSS EXAMINATION (Continued)

BY MR. MITCHELL:

Q Tell me, this male, was he taller than the female?

A No.

Q Same height?

A I think he was shorter.

Q He was shorter than the female. Do you remember what height you gave the FBI?

A About five feet eight.

Q About five feet eight. And he was shorter than the female? She would be about five feet ten?

mcs Morrison - cross

A She was heavier than the male so she appeared taller than him.

Q What weight did you give for the male?

A About 140.

Q So she would be about 150 and taller?

A Yes.

MR. MITCHELL: No further questions.

THE COURT: Do you know whether she was wearing heels or flat shoes?

THE WITNESS: I didn't notice.

REDIRECT EXAMINATION

BY MR. REILLY:

Q When you were observing these two individuals, what part of their bodies could you see?

A From their shoulders up.

Q With respect to the male, what do you remember; what features do you remember about him?

A His facial features were very think and refined, very -- you could notice them right off the bat.

Q What about his hair?

A It was short.

Q What about the female, what facial or other features do you recall of the female from your observation at that time?

A She had long braids and her facial features were large.

Q And by facial features, what are you referring to?

A Her nose and her lips and her eyes.

MR. REILLY: No further questions.

MR. THAU: Just briefly, your Honor.

RECROSS EXAMINATION

XX BY MR. THAU:

Q Those large features were the nose, the eyes and what else?

A Lips.

Q They were particularly distinctive and that is why you remembered them; is that right?

A Yes.

Q Do you recall whether you made it a point when giving these two people's descriptions to emphasize the large eyes, nose and lips?

A Yes.

Q You did?

A Yes.

Q Have you had occasion to review a report prepared by an FBI agent purporting to contain the exact description of the female you gave?

MR. REILLY: I object. I think he ought to show the report.

THE COURT: No, he can ask her if she recalls it and if she doesn't, then he has two options.

Q Did you ever see a report which contains what purports to be a description you gave of the female?

A Yes.

Q Would you agree with me that description speaks nothing at all about large eyes, nose or lips?

A No.

Q It does not?

A No.

MR. THAU: Thank you.

MR. MITCHELL: Just one question, your Honor.

RECROSS EXAMINATION

BY MR. MITCHELL:

Q You said that the female was taller than the male. Do you recall telling the FBI in your interview on March 8th that the female was between five feet five and five feet six and the male was five feet eight?

A I don't remember.

MR. MITCHELL: I have no further questions.

MR. REILLY: Nothing further, your Honor.

THE COURT: Mr. Thau?

MR. THAU: No, thank you, your Honor.

THE COURT: Thank you very much. You are excuwed.

(Witness excused.)

THE COURT: Let me speak with counsel at the side bar for a moment relative to the timing. The hour is approachine one. I would just like to follow up with you, if the jury will be patient for a moment.

(At the side bar.)

THE COURT: Mr. Reilly, do you believe that this would be an appropriate time for a luncheon recess or do you have a short witness?

MR. REILLY: No, I don't, so it would be appropriate.

THE COURT: We'll take our luncheon recess at this time.

Do you have commitments?

MR. THAU: I have a 1.15 sentence and two 1.45 sentences.

THE COURT: 2.15 would be idea. I'll tell the jury.

MR. MITCHELL: I have something to attend to.

(In open court.)

THE COURT: Ladies and gentlemen, we have just

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conferred at the side bar. We are going to take our luncheon recess at this time. Counsel have certain things that they must do during the luncheon period, as does the Court. Therefore, I'm going to ask the jury to return at 2.05 p.m. We will try to get started promptly at that time. Please do not discuss the case among yourselves. If you should learn anything about the case from any source outside the courtroom you are directed to report the matter to me at once upon your return.

Finally, I ask the jury to continue to keep an open mind on all facets and faces of the case until the case has been completed and has been given to you following my charge.

The jury is excused for lunch and is requested to return at 2.05 p.m.

Enjoy your lunch.

(Luncheon recess.)

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AFTERNOON SESSION

(2.10 p.m.)

(Jury present.)

THE COURT: Good afternoon, ladies and gentlemen. We will continue now with the Government's case.

MR. REILLY: Our next witness is Mr. Credell.

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W I L L I A M C R E D E L L , J R ., called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Credell, where do you work?

A I work for Holmes Protection.

Q Where is that?

A The main office is 370 Seventh Avenue.

Q What is your job with Holmes Protection Company?

A I work on the surveillance cameras in the banks.

Q Is one of the banks that you service the First National City Bank at 40 West 57th Street?

A Yes, it is, Judge.

Q Directing your attention to March 5, 1976 did

you have occasion to go to the First National City Bank at that address?

A Yes, I did.

Q Tell us what you did?

A The Holmes central office received an alarm and I proceeded there and removed the film and turned it over to the FBI.

Q Is that your job, to remove the film?

A Yes.

Q And you did remove the film?

A Yes.

Q And you also replace that film with new, unused film?

A Right.

MR. REILLY: I would like to mark two exhibits, Government's Exhibit 4 and 5 for identification.

(Government's Exhibit 4 and Government's Exhibit 5 were marked for identification.)

Q I'm going to show you Government's Exhibit 4 and 5 for identification. I will ask you to open up Government's Exhibits 4 and 5 for identification.

What does Government's Exhibit 4 for identification contain?

A This is camera No. 2 and it is one reel of

35 millimeter film.

Q Do you recognize that particular roll of film?

A Yes, I do.

13 Q Tell me what it is from?

A It is from 40 West 57th Street.

Q On what date?

A 3/5/76.

Q Is that the film that you handed over to the FBI on that date?

A Yes, it is.

Q Did you make any notations on it?

A Just the dates and the lens settings and that it was a holdup.

Q Would you inspect Government's Exhibit 5 for identification, please?

A The same thing, another camera.

Q Is that agai at the First National City Bank at 40 West 57th Street?

A Yes.

THE COURT: What camera number was that?

THE WITNESS: This is camera No. 1.

Q Tell us what you did. You went to camera No. 1 and took that film out of there?

A Yes, I did.

Q Did you make any notations on the can of the film?

A That it was a holdup and the lens setting.

Q Is that your writing?

A Yes.

Q Does the date appear?

A Yes, it does.

Q What is the date?

A 3/5/76.

Q Are you familiar with the manner in which the surveillance cameras operate?

A Yes, I am.

Q Would you tell us first of all whether this is a camera which takes pictures continuously or every few seconds?

THE COURT: Or not.

Q Or not.

A As soon as the holdup button is pulled the cameras run continuously.

Q How many feet of film are contained in the cameras?

A 100-foot rolls.

Q What happens when you run out of film?

A It stops completely.

mcs Credell - direct

Q If the alarm is not pressed no pictures are taken; is that correct?

A Correct.

MR. REILLY: No further questions.

I do have one further question. Excuse me.

I would like to mark as Government's Exhibit 6 for identification this single pice of paper.

(Government's Exhibit 6 was marked for identification.)

xx Q I'm going to show you Government's Exhibit 6 for identification.

Would you just examine it quickly?

A Yes.

Q Did you produce that for me today?

A Yes, I did.

Q Did you produce that from the records of Holmes Protection Agency?

A Yes, I did.

Q Is that a record which is kept in the normal course of Holmes Protection Agency's business?

A Yes, it it.

Q Was it part of the business of Holmes Protection to keep such a record?

A Yes.

mcs Credell - direct

Q Finally, were the entries which appear on that slip of paper, that record, made at or about the time of the events described?

A Yes.

Q Could you just tell us what that record is?

A This states --

MR. THAU: I ask that he need read from it.

Q Just describe the the record generally?

A This describes the time that the holdup button was pulled. As soon as the button is pulled, which was 1.58, it is turned over to the police.

Q Hoes does Holmes Protection receive notice of that?

A Through the hold-up alarm.

Q There is a direct connection from the bank to the Holmes Protection Agency as well as to the police?

A Yes, there is.

Q Does it describe any other events?

A What time Holmes arrived at the bank and what time we gave it over to the police.

MR. REILLY: I would like to offer in evidence Government's Exhibits 4, 5 and 6.

MR. THAU: May we approach the bench on that offer?

mcs Credell - direct

THE COURT: Yes.

MR. MITCHELL: May I look at this a minute?

THE COURT: Yes.

(At the side bar.)

MR. THAU: Your Honor, this evidence relates to Count 3 about which I've made a motion, as you know. I don't know whether you have had a chance as yet to inspect the grand jury minutes and to decide my motion. In the event you have not, then I think it would be premature for an offer on that count.

THE COURT: I have examined the grand jury minutes in camera and although the presentation was totally by hearsay the grand jury was advised that they could see and hear further witnesses. I find that each element of the crime of attempted bank robbery was presented to the grand jury. Accordingly your motion is denied.

MR. THAU: May I be heard on this? There is no doubt in my mind that were an agent to have quoted Mrs. Lily Yu he would have spelt out a crime of attempted robbery. The question here is the grand jury having indicted these defendants on trial, these specific defendants, what evidence was there presented which pointed to them rather than to anyone else?

THE COURT: There was sufficient evidence in the

form of the hearsay statements of Miss Yu and photographs for the Court to conclude that there was some direct and additionally there was circumstantial evidence sufficient for the jury drawing the appropriate inferences to indict for the crime of attempted bank robbery.

Do you want to add anything, Mr. Reilly?

MR. REILLY: No, your Honor, just to put on the record that I did make available to you the grand jury testimony in connection with Mr. Thau's motion to strike Count 3.

THE COURT: That is correct.

I think it would be appropriate at this point if the Court handed the minutes to the clerk and directed that they be sealed. If at some future date someone wishes to have the Court of Appeals inspect these minutes they may make an appropriate application to do so.

MR. THAU: I appreciate that.

MR. MITCHELL: I'm bothered by this:

Once a witness takes the stand we are entitled to every bit of 3500 material.

Did Miss Yu testify before the grand jury?

THE COURT: No, she did not testify before the grand jury.

MR. MITCHELL: Then it would become necessary

for us in order to get that testimony the FBI agent, to get it as 3500 mater l.

THE COURT: You can deal with that in whatever manner you see fit. At this point I will tell you that Lily Yu did not testify before the grand jury.

MR. THAU: That is the representation that was made to us.

THE COURT: Miss Kruger, I hand you the grand jury minutes which were turned over to the Court by Mr. Reilly. They are in an envelope. I ask that you seal them and mark the envelope "Under seal; not to be opened unless there is a further order of this Court or of a higher Court."

Is that agreeable, gentlemen?

MR. THAU: It is, your Honor.

MR. REILLY: Yes, your Honor.

MR. MITCHELL: Yes.

14 MR. THAU: With respect to 6 for identification, your Honor, I object to 6. Obviously it was from the teller. It says, "Note passes." Unless this witness can represent that any part of this film depicts equivocally someone passing a note, then the content of it is obviously hearsay presumably from Miss Lily Yu, so even though they kept it in the regular course of business, it

does not make a hearsay statement admissible.

MR. REILLY: It is a statement that the robbery that took place was by a male and female at the particular time indicated on the reverse side. In that sense it is nothing more than a report of the bank robbery and not that the defendants committed it. It may be and you may find it more appropriate, since there is no indication of your clients on this piece of paper, NO. 6 --

MR. THAU: To stipulate to the fact --

THE COURT: -- that on that day and at that time there was an attempted holdup at that bank by a male and female and that they got away, period.

MR. REILLY: And that Holmes Protection Service got to the bank at a certain time.

MR. THAU: I wouldn't dispute that they got to the bank at some time in the day, whatever time he says.

THE COURT: In response tc an alarm.

MR. THAU: Yes. He has already testified to it.

MR. REILLY: At 1.58 p.m.

MR. THAU: If that is what he says.

MR. MITCHELL: Wait a moment. Before I stipulate -- I'm bothered by something. I don't know if you caught it. The original time on here was 2.09, not

1.58. It is crossed out. That is what I'm going to object to, unless we have a complete explanation. This might have been another holdup in spite of what Miss Yu said. There might have been something wrong with the mechanism. It is an altered document and unless you can show me who made the alteration --

THE COURT: There does seem to be a change.

MR. REILLY: Yes, your Honor, on their records there was a change. This is what I call a duplicate document. We'll let the witness explain.

THE COURT: All right, I'll let you proceed in that regard. Then if after counsel has heard the witness testify they wish to stipulate, all right. I suggest you approach Mr. Reilly outside the hearing of the jury and then, if not, I'll consider the offer.

MR. REILLY: With respect to 4 and 5, is there any objection to that, gentlemen?

MR. THAU: This is part and parcel --

MR. MITCHELL: If there is no satisfactory explanation of time I'm going to object to it.

MR. THAU: Since they relate to the film.

THE COURT: I think there is enough in the record for me to take 4 and 5. I'll withhold my ruling on that until Mr. Reilly finishes his inquiry.

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(In open court.)

BY MR. REILLY:

Q Directing your attention to Government's Exhibit 6 for identification, I call your attention to the first two entries, 1976 March and it gives the time as 1.58 and there is a crossed-out figure.

THE COURT: Crossed-out time.

Q Crossed-out time. Can you tell us what the crossed-out figure relates to?

A I have no idea.

Q And the figure 1.58 --

A 1.58 is when the holdup button was pulled.

THE COURT: From what do you derive that knowledge? How do you know that?

THE WITNESS: Because it was stamped. As soon as the alarm comes in it is stamped, 1976, March 5.

THE COURT: Yes, but the stamp is a slightly different number than 1.58. Someone has written over the 1.58.

THE WITNESS: That is true.

THE COURT: Can you explain the reason for that discrepancy?

THE WITNESS: No, I cannot.

THE COURT: Is there any indication that there

were two holdup alarms from that branch on the afternoon of March 5, 1976?

THE WITNESS: No. No, not on this sheet, no.

THE COURT: In any event, as I understand your testimony, when the alarm button is pushed the cameras start to function?

THE WITNESS: Yes.

THE COURT: And they continue to function until they run out of film?

THE WITNESS: Right.

THE COURT: And you went to the bank on March 5, 1976, what was the condition of the cameras and the film in them?

THE WITNESS: The cameras were out of film completely.

THE COURT: There is no way, is there, once the alarm button is pushed for the cameras to be stopped or reversed; they do just have to run out; is that right?

THE WITNESS: Yes, they could be stopped, but it is very unlikely. It is under lock and key.

THE COURT: Who has the lock and key?

THE WITNESS: Holmes Protection.

MR. MITCHELL: May I ask a question onthe voir

dire?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q Is it possible --

THE COURT: Anything is possible. I think you'd better rephrase your question.

Q Suppose the teller were to pull the alarm but not enough and then after a while, say some time later because of the original pull, the rest of it sprang out and so the alarm rang; is that possible?

THE COURT: You either pull the alarm or not.

Or could you pull it partially and the mechanism not be activated?

THE WITNESS: It is possible. It is possible. Very unlikely, but possible.

Q It is possible?

A Possible.

Q And you yourself do not know who made the change in ink on the record?

A No, I don't.

MR. MITCHELL: I'm going to object to its introduction in evidence, your Honor.

MR. REILLY: We'll withdraw this particular

exhibit, your Honor. We are now offering 4 and 5.

THE COURT: That is the film taken from the cameras in the bank.

MR. MITCHELL: May I state an objection?

THE COURT: Please do.

MR. MITCHEL: I object on the ground that there is no proof before this Court as to the time when this film was activated.

MR. REILLY: In response, your Honor, the witness has stated that on March 3, according to the record there, it was loaded and it wasn't taken out until he went there at 3.15, some time in the afternoon, to take it out on March 5. Therefore, as Lily Yu has testified, she pushed the alarm some time around 2 o'clock and the police came shortly thereafter and Holmes Protection was notified. It seems obvious that these films had to record the event that Miss Lily Yu described.

15 THE COURT: The objections interposed to Government's Exhibits 4 and 5 for identification are overruled.

6 for identification has been withdrawn and will remain marked for identification.

(Government's Exhibits 4 and 5 were received in evidence.)

xx

MR. REILLY: We have no further qudstions of the witness.

MR. MITCHELL: No questions.

CROSS EXAMINATION

BY MR. THAU:

Q Mr. Credell, you yourself don't make any prints from the frames of these films, do you?

A We do, but not from those rolls. Those rolls are turned over to the FBI.

Q Just before I resume my examination, if I have any, let me just look at something.

Is this negative film or is that reverse film?

A It is developed -- I don't know how the FBI developed it.

Q They developed it?

A Right.

Q How long does that film run, by the way, 100 feet?

A Approximately four minutes.

Q Had you inspected this reel before you brought it?

A No, I haven't.

Q Have you any knowledge whether the way the reel

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is wound, what I'm looking at now, which is the end of it, would be the beginning of the film or the end of the film?

A Probably it would be the beginning of the film.

Q You are not certain of that, though?

A No.

THE COURT: Is there a way to tell by some marking on the film?

Q I show it to you.

A No, not on these rolls.

Q 35 millimeter film generally is numbered, that is, frames are numbered on the type of films that you use on a private camera, for instance. Is this numbered as well?

A No.

MR. THAU: Thank you very much.

MR. MITCHELL: No questions.

MR. REILLY: No further questions, your Honor.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. REILLY: Our next witness is Edward F. Higgins.

THE COURT: Mr. Higgins, please.

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EDWARD FRANCIS HIGGINS, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

Q Mr. Higgins, where are you employed?

A I'm employed as a special agent for the FBI.

Q How many years?

A Five years.

Q During March of 1976 where were you stationed?

A New York City.

Q What squad are you assigned to?

A Bank Robbery Squad.

Q Are you familiar with an attempted bank robbery of the First National City Bank at 40 West 57th Street on March 5, 1976?

A Yes, I am.

Q Are you the case agent in charge of that bank robbery for the FBI?

A Yes, I was at that time when the case was assigned.

Q I will show you Government's Exhibits 4 and 5 in evidence. I will ask you whether you have seen the outside of those containers before?

A Yes, I have.

Q Tell us the circumstances?

A These are bank robbery surveillance films which were exposed during the bank robbery of the First National City Bank at 10 West 57th Street on March 5, 1976. I first saw these films at the photographic laboratory in our office on or about March 8, 197, at which time I reviewed the films looking for persons who met the description of those persons who attempted to rob the bank on that day.

Q Did you find any frames that depicted those individuals?

MR. MITCHELL: Objection.

MR. THAU: Objection.

THE COURT: Yes, it calls for a conclusion. I think you ought to go about it slightly differently.

Q Did you choose any frames based upon the statements which were provided by the bank personnel?

A Yes, I did.

Q What did you do with the frames?

A I made an order that those frames be printed.

Q Did the photograph laboratory return the frames to you, the positives of the frames that you selected?

A Yes, they did.

Q I am going to show you Government's Exhibit 1 for identification and ask you to look at that photograph. Do you recognize that photograph?

A Yes, I do.

Q Tell us where you first saw it?

A This is one of the photographs which was printed from one of these rolls of film.

MR. THAU: Objection. The question was where did you first see it.

THE COURT: Yes.

A In our photographic laboratory where I picked it up.

Q Didn't you look at something before you picked it up in a developed form?

THE WITNESS: I'm sorry.

Q You reviewed Government's Exhibits 4 and 5; is that correct?

A Yes.

Q The negatives?

A Yes.

Q Does Government's Exhibit 1 for identification correspond to any frames on either Government's Exhibit 4 or Government's Exhibit 5?

A Yes, this is one of the -- this is a print of

one of the frames.

Q That was produced by the FBI photographic laboratory?

A Yes, it was.

MR. REILLY: I offer in evidence Government's Exhibit 1.

MR. MITCHELL: May we see it, please?

THE COURT: Yes.

MR. MITCHELL: Will your Honor bear with me for a moment?

THE COURT: Of course.

(Pause.)

MR. MITCHELL: May I ask a preliminary question?

THE COURT: You may have a voir dire.

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q At the time that you picked the frame to be developed did you have a description of the clothes of the male alleged perpetrator?

A Yes, I did.

Q Was that a dark blue or black short leather jacket?

A Yes, I recall it was.

Q And in Exhibit 1 for identification is there

anybody in the photograph wearing a blue or dark short leather jacket? Just yes or no.

A Not that I can see.

MR. MITCHELL: I'm going to object, your Honor.

THE COURT: Mr. Thau, do you wish to make any inquiry?

MR. THAU: Yes, your Honor.

VOIR DIRE EXAMINATION

BY MR. THAU:

Q Mr. Higgins, do you know a Mrs. Lily Yu?

A I've met her, yes.

Q Did you meet her before you ordered a print from one of the frames?

A No, I did not.

Q So that you did not consult her with respect to your inspection of the entire film before you made a decision on which frame to print? You made a selection yourself; is that right?

A That is right.

Q Now, this device that you used to review the film, is this a device that turns a negative into a positive, that reverses the process, essentially?

A No, it remains a negative.

Q It remains as it is here on the film so that

what is white appears black; is that right?

A That is correct.

Q How many frames would you say there are in these two exhibits?

A There would be hundreds in each roll. I don't know exactly how many.

Q Hundreds?

A Yes, sir.

Q It was your information that these films had been started the moment an alarm had been pulled; is that right?

A That is correct.

Q Did you make any prints of anyone standing by a counter?

A Yes, I did.

Q A teller's counter?

A Yes, I did.

Q May we see those?

A We didn't retain those prints. We retained only the prints that I felt were suitable for purposes of identification.

Q How many persons would you say, young black persons, appeared over these hundreds and hundreds of frames which you did not print?

A I couldn't even estimare.

Q Have you done a good deal of this reviewing of negative film in your career?

A Yes, I have.

Q I'm sorry?

A Yes, I believe I have.

Q To the point where in your judgment on this negative film you could distinguish a black person from a white person?

A Yes.

Q Would you agree with me that there were black persons fitting the general description of the persons you were interested in those frames and that those black persons were persons other than the ones on which Exhibit 1 for identification focus?

A I don't believe I could say that without reviewing the films again.

Q What is your recollection of it?

A I don't recall seeing it.

Q Look at Government's Exhibit 1 for identification again. Look toward the left margin of it. DO you see there a young black man with a long coat?

A Yes, I do.

Q Could you estimate his age from that vantage

point?

A I would estimate him as 30.

Q He is not the focus of your attention in this picture, however; is that right?

A That is correct.

Q And there are other black females in this photo alone, this one frame, other than the one on which you are focusing your attention; is that right?

A That is right.

Q Do you know what a contact print is of a 35-millimeter film?

A No, I don't.

Q Let me describe something to you and ask you whether you have seen it.

Have you ever seen a roll, just such as the film looks like, that roll being an actual series of positive pictures made from the film by placing the film in contact with photograhic paper. Hence the word contact print. It is made without enlargement. Do you know what I'm talking about?

A I have seen positive prints similar to the negative prints, but I didn't know how they were made. I'm not familiar with the term contact print.

Q Are those ever made or did you make any or

were there any made from this film?

A Yes, they were made.

Q Did you order one to be made? Did you order that a contact print be made?

A Are you referring to something like -- I mean --

Q A contact print is something the same size as the film?

A No.

Q And it rolls up in the same manner as the film. You are not familiar with that?

A I've never seen it.

Q You have no way of estimating, have you, how many black males and black females approximately 20 years of age appear on the two films sitting in front of you?

A No, I don't.

Q I may have asked you this before and, if so, forgive me for being repetitious. It is clear that the selection that you made from these hundreds of frames was a selection not assisted by Mrs. Yu, the teller.

A That is correct.

MR. THAU: I would object. I would like to state my reasons at the bench, your Honor, perhaps.

MR. REILLY: Before doing so, may I just inquire further and perhaps save Mr. Thau some trouble?

BY MR. REILLY:

Q You did not speak with Miss Yu; is that correct?

A Correct.

Q From whom did you learn of the description of the alleged robbers on that day?

A Before reviewing the film I spoke to Special Agent Al DiBono who was at the bank and who interviewed witnesses at the bank.

Q Did he tell you that she had supplied him a detailed description of the two alleged attempted robbers?

MR. THAU: Objection to "detailed," your Honor.

THE COURT: Yes, not that word.

Q Did he advise you whether or not Mrs. Yu provided a physical description of the two --

MR. THAU: Unless this officer is going to be a witness, I would object to that as hearsay.

MR. REILLY: This is in answer to Mr. Thau's --

THE COURT: I'll take a yes or no answer, that is all.

A Yes.

Q Directing your attention to a photograph,

which is Government's Exhibit 1 for identification, Mr. Thau had reference to a young black male to the left of the film. Why did you not focus on the young black male to the left of the film or photograph?

A Based on the information which I had been provided, I was looking for a male and female together.

Q With respect to the two females Mr. Thau alluded to in the photograph, why did you not focus on one of them?

A I concluded they were children.

THE COURT: We'll go to the side bar, unless Mr. Thau wants to ask you something.

VOIR DIRE EXAMINATION (Continued)

BY MR. THAU:

Q The questions just asked you by Mr. Reilly referred to this one frame of a film containing countless frames; is that right?

A Yes, sir.

Q You cannot assert, can you, that nowhere in this film is there not another young black couple, can you? Can you tell us with certainty that no young black people other than the one you are focusing on appears in that whole frame?

A There is not another couple in this sequence.

I didn't review every sequence on the film.

Q By sequence, do you mean one continual operation of the camera and then another stop?

A That is correct.

Q How many stops do you ascertain there had been in that film from the moment it started rolling until the moment it stopped?

A I never ascertained how many there were.

Q There are some. When you use the term in sequences you speak in terms of interruptions and resumptions; is that right?

A I wasn't concerned with the number of sequences. I was looking for the last one and I went to the beginning of the last one and viewed that sequence in its entirety.

Q When you speak of sequences you speak, do you not, of film stopping and the film resuming?

A That is correct.

Q You you remember that there were sequences in these films; is that right?

A Yes, sir.

Q Have you any way of ascertaining by inspection of the film the time lapse between two sequences?

A Not in those particular films, no.

Q I notice that before you answered the question

you looked at Exhibit 1, the photo. Have you any way of ascertaining this by looking at the film?

A Not these particular films, no.

THE COURT: Do you know whether or not these films stopped and started from the time the camera first started rolling until the time the camera ran out of film?

THE WITNESS: When the last sequence -- after the last sequence began, your Honor, there was no stop.

THE COURT: What about before that "last sequence" had begun?

THE WITNESS: There would have been stops and resumptions. Most banks, they will test the cameras periodically to see if they were working and this would account for stops and resumptions. They will be activity in the bank which will cause a bank employee to activate the camera for one reason or another, which would account for other stops and resumptions.

THE COURT: Do I understand that you took this frame from the very last sequence?

THE WITNESS: Yes, sir.

Q Do you know how long that whole film runs, if it runs in one continual taking?

A No, I do not.

Q Approximately?

A I don't have any idea.

Q And the prints you made was from the tail end of the film?

A It was from the last sequence.

Q Do you know how the two cameras are disposed in that bank?

A One is over the door and one is to one side of the door. I don't recall which side.

Q And Exhibit 1 is a shot taken by which camera; do you know?

A No, I don't know.

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q You told the Court and jury before that the reason that you didn't use the sequences where there were people at the tellers window is that they were not identifiable; is that correct?

A I said that I selected this one as I felt it was the best one for purposes of identification.

Q Were the others identifiable?

A As I recall, the next frames of this sequence were not.

MR. MITCHELL: I have no further questions.

MR. THAU: Your Honor, may I go to the side

bar?

(At the side bar.)

MR. MITCHELL: Your Honor, I have already made my objection, but I will amplify my motion now. If there was interruptions, as I have been trying to develop, with the other man, that would mean that the people who actually perpetrated the holdup would have been depicted if they were identifiable.

Now, if as in this picture the man was wearing a long coat, you could show it. Therefore we have to assume -- I'm doing this -- that he wasn't wearing a long coat or they couldn't identify it or it was blurred. Those are the ones who perpetrated the holdup. We have not the burden of establishing what my client and his partner were doing in the bank, since there was no identification by Miss Yu, and I'm going to object to this photograph as highly prejudicial.

MR. THAU: I think that the Government ought to have given us innumerable frames to see whether the outer clothing of the people who stood by the counter was reasonably similar to the outer clothing worn by the defendants on Exhibit 1. This selection that was made by this witness without consultation with Miss Yu, who herself couldn't identify these defendants if they happened

to have been there quite innocently, and that is why they were arrested. I don't think the picture is admissible.

MR. REILLY: The person who really knows how this machine works was just on the stand 15 minutes ago. This individual has no firsthand knowledge on how the film works, but even so, there is testimony that the film was turned over 3.15 that afternoon; that there was no other bank robbery on that day; and, further, that their presence in this picture is actually circumstantial and actual evidence on their presence there shortly after the bank robbery.

MR. THAU: And if Mr. Reilly or I happened to have been in that bank and someone fitting our general description had been accused of it, but the teller couldn't say it is Reilly or Thau who did it -- it is highly prejudicial.

MR. MITCHELL: The witness in answer to my question, the witness Credell, admitted that it was possible for the camera to start and stop and then start again, and I say to your Honor that there could have been other people there and I don't think the Government has met its burden.

THE COURT: That is a matter which you can argue to the jury, and I'm certain you will.

Inasmuch as the entire roll of each film is in evidence and the Government has chosen to put in this one frame, I'm going to do two things:

No. 1, I'm going to overrule your objection and admit the print, Government's Exhibit 1 for identification, into evidence and, of course, permit you overnight, if you wish, to review the rest of the film, which I gather takes approximately five minutes for each roll, and if you choose to have overnight development and want printed any other prints from these rolls I would consider the authenticity already to have been established. I will permit you to offer them in evidence.

MR. THAU: With proper equipment it takes five minutes, but by hand --

MR. MITCHELL: Would your Honor do this in the interests of justice:

One, hold up the admissibility of this thing until the other things are developed; and, two, ask the FBI, which has the best lab in the city, to produce the pictures by tomorrow morning.

MR. REILLY: I object to that.

THE COURT: If you want to go after the court day with the agents and have them run through a screening facility, I'll permit you to do that.

As far as holding up the admission into evidence of this print, the answer is no because what I'm doing is saying you now have available to you the complete document and if you choose on the defense case to put in any other material, I will permit you to do so without having to put in any other witnesses or any further testimony.

MR. THAU: The back of that picture has a statement signed by Miss Yu. That ought to be kept out.

THE COURT: Yes, I agree.

MR. REILLY: We will substitute.

THE COURT: I have indicated what you may do. I have also indicated my ruling. The exhibit is received.

MR. REILLY: I would like the record to reflect that I made available two rolls of film to Mr. Thau yesterday afternoon if he wished to have looked at them.

MR. THAU: I don't deny it. I don't recall it either.

MR. MITCHELL: Your Honor, would you instruct or find out from Mr. Higgins where I can meet him at 5.30? I assume we will work until 5. I have to go

mcs Higgins - direct

to my office. I want to ask him to run the print off, just the print of the individuals at the teller's window.

MR. REILLY: I don't know whether they can run off prints.

THE COURT: I think there would be some sort of viewer. I understand what you do with movie film, you develop it so that it can be run through a projector and can be seen. If you want a particular frame you do that in the same manner as you print a regular photograph.

MR. THAU: That is right, that is the type of film you have in your private camera.

MR. MITCHELL: Can we find out from Mr. Higgins where they have viewing apparatus?

THE COURT: Yes, after he finishes.

(In open court.)

(Government's Exhibit 1 was received in evidence.)

MR. REILLY: I offer 1-A, a substitute exhibit, as we agreed.

THE COURT: Yes.

Is that agreeable to counsel?

MR. THAU: Yes.

MR. MITCHELL: Yes.

THE COURT: 1-A is received in evidence, the Court noting that the objection to Exhibit 1 was overruled.

(Government's Exhibit 1-A was received in evidence.)

xx Q Mr. Higgins, are you personally familiar with how the camera machines at the First National City Bank at 40 West 57th Street operate?

A No, I'm not.

MR. REILLY: No further questions.

MR. MITCHELL: No questions.

MR. THAU: No questions.

THE COURT: Very well, you are excused, Mr. Higgins.

Ladies and gentlemen, we will take our mid-afternoon break at this time, which will be ten minutes, and then we will proceed until the conclusion.

The jury is directed not to discuss the case among themselves. Please keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

(The jury left the courtroom.)

(Recess.)

MR. REILLY: I would like to make an application to call Mr. Higgins back to the stand in connection with

the sequence testimony that he made. I think it will remove some doubt as to the significance of that.

THE COURT: You may do so.

(Jury present.)

THE COURT: The Government has made an application to recall Mr. Higgins.

E D W A R D F R A N C I S H I G G I N S , resumed.

DIRECT EXAMINATION (Continued)

BY MR. REILLY:

THE COURT: Mr. Higgins, you will continue your testimony under the same oath as was administered earlier.

Do you understand that?

THE WITNESS: Yes, your Honor.

Q Mr. Higgins, during the recess did you have an opportunity to review Government's Exhibits 4 and 5 now in evidence?

A Yes, I did.

Q And directing your attention to your testimony concerning sequences, were you able to determine with respect to Government's Exhibit 4 how many sequences there were in that can or roll of film?

A There was one sequence of approximately five frames which showed the bank with no one in it; showed

the interior of the bank with no one in it.

Q Was there a sequence thereafter?

A Yes.

Q How many sequences in total were there?

A Two sequences.

Q Was the second sequence the sequence that you examined?

A Yes.

Q What proportion of the roll of film did that second sequence encompass?

A The vast majority, 95 per cent.

Q Is that the sequence that you examined in looking for the frames that you were asking to be made up as positives?

A Yes.

Q Now, with respect to Government's Exhibit 5, did you examine the number of sequences in that roll of film?

A Yes, I did.

Q How many did you determine to exist?

A A total of three sequences, the first of which was approximately four frames, the second of which was approximately ten frames. Both the sequences showed the interior of the bank with no one in it. The third sequence depicted -- was the rest, the remainder of the

film, which was that which I viewed earlier.

Q When a bank alarm goes off, what effect does that have on your camera?

MR. MITCHELL: Objection, your Honor.

THE COURT: If you know.

Q If you know.

THE COURT: Or what effect did it have on the camera at that branch of the First National City Bank, if you know.

THE WITNESS: When the alarm is activated the cameras are activated simultaneously by the same button.

Q Do you know whether there are any interruptions or stops once an alarm has activated the roll of film?

A It can be turned off.

Q It can be?

A Yes, sir.

Q And in your examination of Government's Exhibits 4 and 5, was it turned off?

MR. THAU: I object to that question in that it is probably not within the realm of this witness' competency.

THE COURT: Do you know how it can be turned off?

THE WITNESS: I know that someone at the bank,

if the suspicion button is pressed, someone at the bank can turn it off.

THE COURT: By doing it with some device or other or what?

THE WITNESS: Yes, your Honor.

Q If a bank alarm button is pressed is it possible to turn the film off?

THE COURT: If you know.

A I don't know.

Q Do you know what the normal practice is?

MR. MITCHELL: Objection.

THE COURT: Sustained.

MR. REILLY: Nothing further.

CROSS EXAMINATION

XX BY MR. THAU:

Q With respect to the first sequences in which you say no one is in the bank, do I understand this to mean that no one is on the public floor?

A No one is within the purview of the camera.

Q Did you inspect those frames to see whether there are tellers or other workers, employees of the bank, behind the counter?

A No, I didn't.

Q So basically what you are talking about is no

one being on the public area of the floor?

A That is correct.

MR. THAU: Thank you.

THE COURT: Thank you very much, Mr. Higgins, you are excused.

(Witness excused.)

MR. REILLY: The Government's next witness is Nora Palmer,

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N O R A P. P A L M E R , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REILLY:

MR. REILLY: May I have a short side bar?

THE COURT: Yes.

(At the side bar.)

MR. REILLY: Mr. Miller advises me that he ascertained as he brought Miss Palmer in here that she has been looking around for a bathroom and if she is on the stand very long she will need a recess.

MR. MITCHELL: My problem is this:

I don't know how he intends to start, but having gone through the preview I think in fairness to the

defendants she should start by saying -- we're not going to contest the arrest and she should start with the fact that she saw him and placed him under arrest and placed the girl under arrest and go on from there. I don't think that outstanding arrest warrants make any difference. I don't want to get in that she identified him from a photograph. I don't think that is proper.

MR. REILLY: I think that is proper. I don't think there will be any information about outstanding arrest warrants.

MR. MITCHELL: There is a question of fact even on the photograph that has been admitted. There is a question of: Is it him? Is it her? I don't want the detective to pick up that same photograph and say "That is him. That is why I arrested him."

THE COURT: I'm going to first hear from Mr. Thau.

MR. THAU: I think Mr. Mitchell is right, because if she is permitted to say "I had a photograph," she is substituting her own judgment as to whether these are the people depicted, for the jury's judgment and it should be the jury's judgment. We don't contest the arrest. I suppose the only reason Mr. Reilly is calling her is to introduce the gun and the note, the demand note.

mcs Palmer - direct

It is principally that. I think that can be accomplished quite efficiently without going into the photographic business.

MR. MITCHELL: One other question. That raises a secondary problem. Are you going to introduce any alleged admissions from her?

MR. REILLY: No.

MR. THAU: I don't know how Mr. Reilly had prepared Detective Palmer, but if you agree with Mr. Mitchell and myself maybe Mr. Reilly ought to speak to his witness so that she doesn't blurt something out.

THE COURT: I don't think she would blurt anything out.

MR. THAU: I don't mean that in a pejorative sense. Witnesses have sometimes been known to do that.

MR. REILLY: We do not agree with Mr. Thau and Mr. Mitchell.

THE COURT: If you want to put it your way you can do it. I would prefer that you begin that they saw him and she can even say based on a description which she had she recognized him, and therefore they got out of their car and placed him under arrest and conducted the search in question. I think you can do it just as well based on a description which she had.

Do you want to speak to her for a moment?

Is that satisfactory, gentlemen?

MR. MITCHELL: Yes, your Honor.

MR. THAU: Yes, your Honor.

(In open court.)

THE COURT: I believe the witness has been sworn. Is that correct?

THE WITNESS: Yes.

THE COURT: Very well, would you begin now, please, Mr. Reilly.

Q Miss Palmer, where are you employed?

A I'm a member of the New York City Police Department.

Q For how many years have you been a member of the New York City Police Department?

A For 12-1/2 years.

Q What is your present position?

A I'm Detective assigned to the Major Case Squad.

Q When were you first assigned to the Major Case Squad of the New York City Police Department?

A February 1976.

Q Prior to that time what were your duties?

A I served in the Narcotics Squad. I served

in the Homicide Squad. I served in Burglary-Larceny and I served in the Sex Crimes Squad.

Q Directing your attention to March 12, 1976, were you on duty that day?

A That is correct.

Q What were you doing that day?

A I was on patrol, my partner and I.

THE COURT: Were you on foot or in a vehicle?

THE WITNESS: In a vehicle.

Q What was your assignment that day?

A My assignment that day, as every day, is bank robbery investigations.

Q In particular, were you conducting a particular surveillance?

A On March 12 the office in conjunction with the FBI agents were conducting a special investigation into the arrest of persons identified as Mr. and Mrs. Green.

Q Did you have a description of Mr. and Mrs. Green?

A Yes, I did.

Q Did there come a time when you saw Mr. and Mrs. Green that day?

A Yes, I did.

Q Tell us approximately when that was?

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A It was approximately twenty to three.

Q Where were you located at the time?

A We were parked on Broadway between 53rd and 54th Streets.

Q What kind of a car were you in?

A We were in an unmarked police car.

Q Were you with anybody else?

A Yes, I was.

Q With whom?

A My partner, Detective Wilbur Segree.

Q Were you both wearing plainclothes.

A We were wearing street clothes.

Q Tell us what happened -- when and where you first saw Mr. and Mrs. Green?

A I first saw them, and I believe my partner and I saw them simultaneously, as they were walking north on Broadway on the west side of the street. As they approached the car Mr. Green looked at me and we exchanged glances. Mrs. Green was on the curb side or the building side of the street, so I don't recall her noticing me. I recognized her, but I don't recall her noticing me.

MR. THAU: Objection to "I recognized her."

THE WITNESS: I recognized her.

THE COURT: I'm going to let it stand. She

said she recognized Mrs. Green.

THE WITNESS: Yes, the person who fit the description of Mrs. Green.

Q How about Mr. Green?

A Yes, immediately. I recognized Mr. Green, but he also saw me.

THE COURT: Your eyes met?

THE WITNESS: Yes, we exchanged glances.

Q What happened then?

A I allowed him to pass the car. At that moment my partner exited the car. He exited into the street, which is the traffic side. Momentarily I exited the car. I observed Mr. Green looking back. I observed very normal and I walked in the direction north on Broadway. I allowed my partner to get around them. As we approached 54th Street Mr. Green looked around and I was standing there and I told him "Police."

He immediately raised his hands. Mrs. Green dropped her bag. I asked them to move --

Q Her what?

A Mrs. Green dropped her pocketbook. She dropped it and remained standing there.

Q Where was Detective Segree at that time?

A He was in back of Mrs. Green.

Q Coming the other way, towards you?

A Yes, they were sandwiched between us.

Q What happened?

A I asked them to move against the wall, which they did. Both of them still had their hands raised. At that point I told them they were under arrest, bank robbery, and I asked Mr. Green, did he have anything, and he said yes.

I asked him where. He said in the left side of his pants. My partner, Detective Segree, lifted his jacket and removed a small weapon.

Q You mentioned that a bag was dropped by Mrs. Green?

A Yes.

Q What became of the bag?

A I picked that up. I retrieved the bag.

Q Did you have occasion to observe the small weapon on Broadway and 53rd Street?

A 54th Street, yes, sir.

Q Did you observe whether or not it contained any rounds of ammunition?

A We did. It contained three rounds. It was emptied.

THE COURT: It was emptied?

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THE WITNESS: The bullets were removed.

THE COURT: Right there on the street?

THE WITNESS: He ascertained whether it was loaded or unloaded and he removed the bullets.

Q You are referring to Detective Segree?

A Yes.

Q At the time of the arrest the gun was really loaded; is that correct?

A Oh, that is correct. Well, loaded -- it had ammo in it. It was not loaded.

THE COURT: I believe you said it had three rounds?

THE WITNESS: Yes, that is correct. That is not loaded.

THE COURT: Not fully loaded?

THE WITNESS: It was loaded, but not fully loaded.

Q What did you do after this time?

A Well, at that point I conducted a superficial search on Mrs. Green, that is, patting her down, ascertaining if there was any weapons. I didn't ask her about any weapons.

A crowd started to gather and in the best interests of everyone we took them to the station house.

Q When you got to the station house, did you have occasion to examine the contents of Mrs. Green's handbag?

A Yes, at the station house after a search had been conducted the contents of Mrs. Green's bag was emptied out in the station house and a note, a demand note was retrieved from that bag.

Q Do you recall on what kind of paper this demand note appeared?

A It was, as I recall -- it was a bank stationery, a note written, handwritten note.

THE COURT: I believe the question was if you recall what color.

THE WITNESS: I don't recall the color. No, I do not.

MR. REILLY: I would like to mark as Government's Exhibit 7 for identification this one slip of paper.

(Government's Exhibits 7 was marked for identification.)

xx Q Showing you Government's Exhibit 7 for identification, I would like you to examine it and tell me whether you recognize that exhibit?

A Yes.

Q How do you recognize it?

A I remember "I went all the money" instead of

"I want all the money." I remember that phraseology which she -- that was what I remembered more specifically, but I remembered the wording itself.

Q Had you seen that before?

A Yes, I did.

Q What was the time you had seen that before?

A March 12, 1976.

Q Is that when you emptied the contents of Mrs. Green's bag?

A Yes.

MR. REILLY: I offer Exhibit 7.

MR. THAU: May I reserve voir dire for cross-examination?

THE COURT: Yes.

Do you wish a voir dire now, Mr. Mitchell?

MR. MITCHELL: No.

THE COURT: I have an offer in front of me. I'll wait for counsel to make their objection.

MR. THAU: Since I wanted a voir dire, but preferred not to do it now, but I will, and then resume cross-examination.

MR. REILLY: I have no objection to that procedure if Mr. Thau limits his voir dire appropriately.

THE COURT: He wants the voir dire now and I'm

going to rule now.

MR. THAU: I will do the voir dire now, your Honor.

VOIR DIRE EXAMINATION

BY MR. THAU:

Q Detective, you work for the New York City Police Department; is that right?

A That is correct, sir.

Q In that capacity you are employed not only to detect and prevent crimes but also to gather evidence, be it physical evidence or testimonial evidence and preserve it for later delivery in a courtroom such as this?

A Only certain cases, sir.

Q Those that go to trial?

A No, sir, not in this particular case. In this particular case the Federal agents handled all physical evidence and they do most all the interrogation.

Q Be that as it may, you had made an arrest, you and your partner; is that right?

A That is correct.

Q Two New York City police officers?

A That is correct.

Q In keeping with good police practice, when you seize any physical evidence whether it be drugs, weapons,

papers, documents, you have to make sure thwat that evidence is preserved intact for presentation to a Court later on; right?

A The continuity is important. However, the continuity --

Q Yes or no?

A The continuity is, yes.

Q Just listen to my question and answer?

MR. REILLY: It has been answered.

THE COURT: Let's not have speeches.

Next question.

Q In the New York City Police Department there is a place called the Property Clerk's office?

A That is correct.

Q If it were not a case which was turned over by the New York City Police Department to the Federal authorities it would have been your duty to properly label and preserve whatever you seized and it would have been your duty to take it to the Property Clerk's office; is that correct?

A That is correct.

Q And it is the practice of your department, is it not, good police practice, that you mark the contraband, whatever it is, whether it be a bag or heroin or a gun or

anything else, that you mark it in such a fashion that later on you could look at it and say "Yes, that is my mark. I handled that and here are my initials and the date"?

A That is correct.

21 Q This is for the purpose of insuring that what is presented in the courtroom months, years later is actually the real McCoy, it is stuff that you seized on the date stated?

A That is right.

Q I show you Government's Exhibit 7 for identification and ask you in what manner you, Detective Palmer, marked that piece of paper in the fashion you and I have been discussing these last few moments?

A This demand note was not marked by myself.

Q Turn it over?

A No, it was not marked.

Q Sometimes contraband is of such a nature that you cannot make an inscription on it, is that right? In other words, if you seize heroin you obviously cannot write on the white powder, right; you write on the container?

A That is correct.

Q You stick it in an envelope, perhaps; is that

right?

A Yes.

Q And on it you put the name of the person from whom you secured it, the place, the hour and your initials and you date it; is that right?

A Yes, sir.

Q So, too, with paper contraband, isn't it correct that sometimes you put that in the Property Clerk's envelopes; in fact, you always put it in the Property Clerk's envelopes?

A Repeat the question.

Q Let's say you make an arrest for stolen checks, forged checks; right?

Have you ever made such arrest?

A No.

Q Have you ever seized any paper evidence in the course of your career with the New York City Police Department?

A This paper I seized.

Q Have you ever seized any other papers?

A There were other papers.

Q Have you not put those papers in a Property Clerk's envelope which you sealed, you taped and you inscribed with your name and shield number and the time

of seizure and the date of seizure and name of person from whom it was seized?

A To be delivered to our Property Clerk's office.

Q That is what I said.

A Yes.

Q Did you take any of the precaustions that we have been discussing now with respect to 7 for identification?

A No.

Q Did there come a time when you turned this piece of paper over to the Federal agent?

A That is correct.

Q And at that time did that agent -- by the way, who was the agent?

A Agent Roach, as I recall.

Q You used the phrase chain of custody before. Did you use that phrase a moment ago?

A Chain of continuity.

Q That is continuity of custody of evidence; right?

A Right.

Q It is vital in your field and ours, isn't it, Detective, that there be shown an unbroken continuity of possession of a particular piece of contraband lest some-

thing happen to it when the chain is broken; is that right?

A It is, yes, sir.

Q It is for that purpose that when one law enforcement official turns a piece of evidence over to another law enforcement official that transfer be noted for later proof; is that right?

A That is important, sir.

Q So when you turned 7 for identification over to Mr. Roach, did he give you a receipt for it?

A No, he did not.

Q Did he look at it and say "Detective Palmer, you know one day we're going to have to testify about this piece of paper. Where is your mark on it?" Did he say that?

A Did he ask me that?

Q Yes.

A No, sir.

Q You just handed it over to him?

A And made an entry on it.

Q Made a memorandum entry on it?

A In my memo book.

Q How about on the paper?

A No, sir.

Q May I see your memo book?

A It is there. Can you read it? This one here (indicating).

Q Your memo book notes, does it not, that:

"The demand note found in Debra's pocket book."

Right?

A As you read it, sir.

Q Does your memo book show the turning over of that note to Roach?

A No, sir.

Q You've been on the Narcotics Squad, I think; is that right?

A Yes, sir.

Q Isn't it invariably so in a narcotics case that the contraband has to be placed in a Property Clerk's envelope and noted and this is where your memo shows that you got some drugs from a defendant or not; is that right?

A That is correct, because it is delivered to our Police Department Property Clerk.

Q When did you turn this piece of paper over to Mr. Roach?

A On the 12th, after discussion.

Q What time?

A It was after the arrest, after the arrest at two or three. We went to the station house and we were there until they took them to FBI headquarters.

Q In your training you learned about the use of fingerprint analysis and handwriting analysis, haven't you?

A That is right.

Q And you are aware, aren't you, that certain substances accept fingerprints better than others?

A That is correct, sir.

Q Did you hand over to Roach 7 for identification just naked as it is now or did you preserve it in some kind of envelope so that whatever fingerprints there may be on it might not be smudged?

A As I recall the incident, when the pocketbook was emptied and there it was ascertained that it was a demand note, the special agent retrieved it so he had handled --

Q Special agent who?

A The special agent retrieved it.

Q From the bag?

A No, from when I ascertained that it was a demand note, so I did not handle it.

Q You never handled this piece of paper?

A I didn't handle it to smudge it. The special agent was aware --

Q I don't think you are listening.

How long after you seized this from the pocketbook did you turn it over to Roach?

A Immediately.

Q He was there, right there?

A As I recall, he was there. There were FBI agents and our officers. There were many members of the FBI, agents, present at the station house.

Q How long after you placed these two defendants under arrest did you reach the station house?

A Whatever, five, ten minutes.

Q And you took them in your unmarked car to the station house?

A Yes.

Q Did you radio the FBI to show up at your precinct?

A It wasn't necessary.

Q They were there permanently?

A No. We were on surveillance for the perpetrators in this case, so the FBI agents in conjunction with our office were all on the streets and we used radios. Once the arrest was made a call went over notifying all

members that an arrest was made and we were en route to the Midtown North Station House.

Q So that when you reached the precinct the FBI agents were there already?

A Yes, members of our department --

Q Yes or no, Detective?

A Yes.

Q Was Roach there?

A At that moment, I don't know. There was lots of confusion.

Q Did you take Debra Green -- you had her pocketbook in your possession, your physical possession between the time you picked it up off the street and the time you arrived at the precinct?

A That is correct.

Q You never let it go from your person?

A No, sir.

Q You had your own bag also?

A That is right.

Q You took Mrs. Green into a detention room, I suppose?

A Yes, sir.

Q Is it then and there that you emptied the bag?

A No, sir.

Q When did you empty the bag? How soon or long after you reached the station?

A After I searched her, took her into a private cell and conducted a search, I took her into the squad room.

Q You were clutching her pocketbook as you were searching her?

A No.

Q Where was the pocketbook while you were conducting your personal search or your search of her person?

A On the floor.

Q Where?

A Right adjoining, right in the --

Q In the detention cell?

A Yes.

Q So that you took that bag in the detention cell? Did you fill out any pedigree papers, name, address, age?

A That is done with the arrest. That wasn't done then.

THE COURT: Done later?

THE WITNESS: Later.

Q Did you take her straight to the cell as soon as you entered the precinct?

A As I recall, I took her immediately into the cell.

Q And you were taking the bag with you?

A That is correct.

Q And your own bag with you?

A That is correct.

Q And was there anybody else in the cell?

A Yes, there was some prisoners.

Q Female prisoners?

A Yes, female detention cell.

Q How many?

A I don't know. There asn't -- they weren't in this cell -- are you familiar with the cells, Counselor?

Q I haven't been in a prison that often.

A From her cell, down the hall, there were other prisoners arrested.

Q She had an individual cell?

A That is correct.

Q After you searched her -- by the way, you found nothing on her person of any note?

A On her body?

Q Yes.

A No, sir.

Q You emptied her bag. Where was that done?

A Upstairs.

Q Did she accompany you upstairs?

A Yes, she was with me at all times until she was turned over to the Feds.

Q Is this upstairs room one in which it is customary to empty bags or other types of receptacles?

A Sure.

Q In other words, if you arrest someone with a big box and you think there may be stolen property in the box you'll dump the contents of this box on the same table as you dumped the contents of her bag; right?

A Possibly.

Q At that stage of the proceedings was Roach there?

A As I recall, he was there. As I recall, there were several agents.

Q Is it at that point that you decided to turn them over to the Federal authoritids or to turn the case over to the Federal authoritids?

A That is automatic, Counselor, procedure.

Q Did Roach say to you, "Detective, I'm taking over, I'll take all the evidence"?

A This is standard procedure.

Q Is that what you say he told you?

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A No, no, I'm informing you that that is standard procedure, that the cases are turned over to the Federal agents for prosecution in Federal Courts.

Q If he was there as you brought up the unopened bag, do I understand that you handed him the bag so that he might take both prisoners and contraband?

A There was no real reason.

Q Did you cause Government's Exhibit 7 for identification to be analyzed either for the presence of anyone's fingerprints or did you cause a handwriting analysis to be made of the handwritten portion of that note?

A No, sir.

Q Both these methods of detection are available to your department, are they not?

A To the Federal department? To my department?

Q To the State as well as the Federal?

A Yes.

Q The Police Department can take fingerprints?

A Oh, but of course.

Q Can also run handwriting analysis, can't they?

A That is correct.

MR. THAU: Your Honor, a chain hasn't been shown here. May I have one quick other one?

THE COURT: You can ask all the questions you want, and then, Mr. Mitchell, if you have any, I want you to cover whatever you want on the voir dire. I'm prepared to rule as soon as you finish.

MR. THAU: Thank you.

Q After you gave this to Roach, when is the next time you saw it?

A Today.

Q Who gave it to you?

A It wasn't given to me. It was shown to you.

Q I'm sorry. Okay, you haven't seen it since the day of the arrest.

MR. THAU: Your Honor, no chain of custody here.

THE COURT: Do you wish to conduct an additional voir dire?

MR. MITCHELL: No, your Honor. I'm going to object on the ground that it is not binding on my client.

THE COURT: I will hear from Mr. Reilly.

MR. REILLY: Your Honor, we have established, first of all, that the witness recalls the note being a Chemical note that flopped right out of the bag. When shown the particular note she immediately recognized it by the nature of the distinctive writing or actually mis-spelling in the note and for that reason we contend that

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sufficient has been shown to receive this in evidence.

It is a question merely of cross-examination and I would think that we have shown the history of this particular note from the time Miss Palmer picked it up until this very moment.

MR. THAU: Mr. Reilly makes light of the chain of custody argument when the customary way a prosecutor introduces something is to trace it from the beginning of time to the end and he says "And I open a lock-sealed enveloped with the initials" --

MR. REILLY: If it is a bag of heroin or some other non-differentiated substance, but not when it is as distinctive as that.

THE COURT: Would you comment as to whether this comes within the purview of Rule 901 of the new Federal Rules of Evidence relative to authentication?

MR. THAU: Excuse me. Mr. Reilly is turning to them.

THE COURT: Yes, I suggest you look at 901 and see if perhaps you have an objection. If you have an objection I'll be more than happy to let you ask further questions.

MR. THAU: Does your Honor have reference to a subsection?

THE COURT: Look at the illustration in 901(b)(1). Needless to say, that is merely by way of illustration. If you'd like to ask some more questions you may. If you choose not to, I will.

MR. THAU: Your Honor, I stand on my objection.

THE COURT: Very well, thank you, you stand on your objection.

BY THE COURT:

Q Detective Palmer, I show you Government's Exhibit 7 for identification and I ask you to look at it. Would you tell me when and where you saw it for the first time?

A I saw it on March 12, 1976 in the station house.

Q From what did it emerge when you first laid eyes on it?

A From the handbag belonging to Mrs. Green.

Q I ask you to look at the note front and back and tell me if that note or document is in the exact same form that it was when you first saw it?

A That is correct, your Honor.

Q Has anything been added to the front?

A Nothing.

Q Has anything been added to the back?

A A piece of paper stapled.

Q A piece of paper, stapled, Government's Exhibit 7 for identification?

A That is correct.

Q Anything else?

A Nothing else.

THE COURT: If anyone wishes to inquire further they may do so.

MR. THAU: Not on the note, your Honor.

MR. REILLY: No questions, your Honor.

MR. MITCHELL: No, your Honor.

THE COURT: The objection is overruled. It is received against Debby Green.

Mr. Reilly, let me hear at the side bar your comments relative to James Green.

(Government's Exhibit 7 was received in evidence.)

(At the side bar.)

MR. REILLY: The evidence to date has been that both Mr. and Mrs. Green, we contend, both defendants, appeared in three different banks together and presented a note. The note was presented by Mrs. Green in Mr. Green's presence and a gun was shown on two occasions by Mr. Green in her presence. They operated together. They were found together as they were walking up Broadway.

We therefore think there is ample evidence in the record for this to be found against Mr. Green.

THE COURT: We do have an aiding and abetting charge.

MR. REILLY: This is a joint venture.

THE COURT: Do you feel that this comes within aiding and abetting?

MR. REILLY: And the joint venture.

MR. MITCHELL: It is not admissible until the jury finds that.

THE COURT: I'm going to receive it only against Debra Green and instruct the jury that they should only consider it in connection with their consideration of the charges against Debra Green.

MR. THAU: And the corollary is that the gun would be admitted only as to him.

THE COURT: I'll deal with that at the appropriate time.

(In open court.)

THE COURT: Ladies and gentlemen, the exhibit which has just been received is admitted into evidence against Debra Green, and should only be considered by you in connection with your consideration of the charges against her, that is, Debra Green.

MR. REILLY: May I have Government's Exhibit 7 in evidence shown to the jury?

THE COURT: You may.

MR. REILLY: While they are looking at it may I continue?

THE COURT: No, sir, nothing happens while the jury is looking at an exhibit.

(Pause.)

THE COURT: You may proceed, Mr. Reilly.

BY MR. REILLY:

Q Do you know whether there is a Chemical Bank branch located in the vicinity of 54th Street and Broadway?

A Yes, there is a Chemical Bank located there.

Q I'm not going to mark for identification Government's Exhibit No. 8, which happens to be a revolver and we'll mark as 8-A the holster and 8-B a series of three bullets.

(Government's Exhibits 8, 8-A and 8-B were marked for identification.)

Q I'm going to show you Government's Exhibits 8, 8-A and 8-B for identification. I will ask you whether you have ever seen those exhibits before?

A Yes, sir.

Q When did you first see those exhibits?

A When they were removed from Mr. Green's left side.

Q Did you see them thereafter?

A In the station house and today.

Q Was any record made of any of those three exhibits?

A Yes.

Q What record was made of those exhibits?

A I will produce it.

Q I would like to show the witness 3526 and ask whether this would refresh her recollection?

A This is the a-rest sheet and there is also --

Q Is this arrest sheet something which was made at the time of the arrest of James Green?

A That is correct, at the station house.

Q On the arrest sheet was a notation made as to the serial number of a weapon that was taken from him?

A Yes, that is right.

Q Is the serial number recorded there?

A 263309 with three live rounds.

Q I would like you to examine Exhibit 8 and see whether you can determine whether there is any identifying mark with respect to a serial number on that exhibit?

A The serial number on the revolver is 263309

and the initials WRS.

Q What are the initials WRS; what do they refer to?

A Wilbur Ralph Segree.

Q Is he your partner?

A That is correct, sir.

Q Have you seen either one of these three exhibits since that time prior to today?

A No, sir.

Q Have they changed in appearance in any way since you last saw them?

A They appear the same.

MR. REILLY: I wish to offer in evidence Government's Exhibits 8, 8-A and 8-B.

THE COURT: 8 is the reolver, 8-A is the holster and 8-B is the three rounds.

MR. THAU: Against James Green only, I suppose?

MR. REILLY: I would offer them against both defendants.

THE COURT: All right, let me see if there is any voir dire that anyone wishes to conduct and then I will hear whatever argument you wish to make, gentlemen, on the admissibility and as against whom at the side bar.

VOIR DIRE EXAMINATION

BY MR. MITCHELL:

Q When is the last time you saw 8 for identification before today?

A On March 12th.

Q When on March 12th?

A At the station house, at the station house where they were arrested.

Q Who showed it to you?

A I saw it in the street, and then I saw it again in the station house.

Q Who had in the station house?

A Detective Segree.

Q Did he show it to you in the station house? Did he say "Here, look at Exhibit 8?

A No, sir.

Q Did you see what the detective did with the revolver?

A I don't understand the question, sir.

MR. MITCHELL: Please read the question.

(Question read.)

A When?

Q In the station house.

THE COURT: Let's start at this point:

You said that this particular exhibit contained some initials on it.

THE WITNESS: That is correct.

THE COURT: Did you see the initials being made?

THE WITNESS: I don't recall seeing the initials being made.

THE COURT: When you got to the station house with Detective Segree and your two prisoner on March 12 did there come a time when you saw thed revolver?

THE WITNESS: Yes, there came a time when I saw the revolver.

Q Who was present when you saw the revolver?

A There were several officers present.

Q Who had the revolver in his hand?

A Detective Segree.

Q What did he do with it?

A I don't know.

MR. MITCHELL: I have no further questions.

MR. THAU: I don't have any questions, if it is offered just against James Green, and that was to be argued at the bench, I supposed.

THE COURT: Let me suggest that we proceed to the side bar and I will hear from counsel.

(At the side bar.)

MR. THAU: The Court having decided the way it did concerning the note which was seized from my client's person, the analogy and corollary is that the gun be admitted only against James Green and not against her. I see no distinction here.

MR. REILLY: Your Honor, the note itself says "we" underlined. I'll take back the "underlined." It says "we have guns." The note was found on Mrs. Green. Mr. Green had the gun. I think for that reason reason alone this is evidence that Mrs. Green knew there was a gun and she therefore should be charged with receipt of evidence of the gun against her and I therefore renew my offer that this note also be accepted against Mr. Green, who was the one who had the gun.

MR. THAU: Now you are saying that there is every reason to believe that these two went into or were going into banks one with a gun and one with a note; that James Green knew just as well that Debra had a note and she knew that he had a gun.

THE COURT: Would you like me to reverse my ruling. I think it might be the appropriate thing to do. You are convincing me now that I should and I think I will.

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MR. THAL: I want you to be consistent. I think consistency is the product of a wise judicial mind.

(Pause.)

THE COURT: Although it may appear to you gentlemen that there is an inconsistency here, I have considered the charges, the assault charges. Now, I know you can make a threat with a note and that has obviously been done, but here when they both walk up to several counters together, when the man produces the weapon from his pocket and they both stand at certain counters and in certain instances actually receive money from tellers, I think that with the charges which are contained in this indictment and with full consideration given to the doctrine of aiding and abetting, it would be appropriate for the Court to permit the proffered exhibits to be introduced against both defendants.

We have a chain of custody point here that I want to just dwell on with you. Mr. Mitchell has indicated that the detective who actually made the seizure is Detective Segree and he is the one also who makred his initials on the weapon. I know you have proved that the weapon has a certain serial number and that serial number appears on the arrest or police records. That may well

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be enough. I would like to hear you on the obvious chain of custody argument here so that I can ascertain why we have not had the detective who made the seizure and I'll hear anything you want to say on the subject at this point.

MR. REILLY: Your Honor, she has testified that she was there when the gun was withdrawn. She observed it at that time. She observed it back at the station house.

THE COURT: Did she check the serial numbers? I don't recall her testimony precisely.

MR. MITCHELL: She did not testify to that.

MR. REILLY: There was an arrest report made at that time.

MR. MITCHELL: Not by her.

MR. REILLY: No, but it was made. The reason we haven't Mr. Segree here at this time is that he is out of the country on his honeymoon. The witness Nora Palmer, his partner, participated in the arrest. She is familiar with the signature. I think that is adequate.

THE COURT: I have determined to make the following ruling and to a certain extent it reverses an indication I made a few moments ago. I'll hear you, Mr.

Mitchell.

Do you want a voir dire if it is going to be admitted? Do you have anything?

MR. MITCHELL: No.

THE COURT: I may be reversing a ruling that I made a few minutes ago, but I have decided if I'm going to be wrong I'm going to be consistently wrong.

This revolver will be received and I will instruct the jury it will be received and considered only against Mr. Green.

MR. MITCHELL: I have my objection.

THE COURT: Very well.

(In open court.)

THE COURT: The objection is overruled as to the proffered exhibits.

The jury is directed to consider the proffered exhibits, Exhibits 8, 8-A and 8-B only in its consideration of the case against Mr. Green.

(Government's Exhibits 8, 8-A and 8-B were received in evidence.)

MR. REILLY: Your Honor, at this time the Government rests.

THE COURT: Do you have any more questions of Detective Palmer? - because it may be that the other

attorneys have some.

MR. REILLY: I'm sorry, that is correct. I withdraw that statement.

No further questions of Detective Palmer.

CROSS EXAMINATION

BY MR. MITCHELL:

Q Tell me, Detective Palmer, do you remember testifying here the other day?

A Beg pardon?

Q Do you remember testifying here the other day?

A Yes, sir.

Q At that time did you say that you were the one who seized the gun from Mr. Green and not your partner?

A No, sir.

MR. MITCHELL: I have no further questions.

CROSS EXAMINATION

BY MR. THAU:

Q Your partner, Mr. Segree, took care, did he not, to etch into the metal of this gun his initials; isn't that right?

A That is correct.

Q And that was for the purpose of identifying that which he later or might later testify he would seize from someone he had seized from someone?

A Yes.

Q He did so even though he knew as well as you knew that this case would be picked up by the Federal authorities in a matter of hours; is that right?

A Obviously, sir.

Q Did your failure to mark Exhibit 7 in any way have anything to do with the fact that the Federal authorities were doing to step into the picture?

A Not necessarily.

Q Assume that you were dealing with a State case strictly, a New York State prosecution, would you not have marked Exhibit 7 in any manner?

A Most likely, yes.

Q Most likely?

A Yes.

Q In fact, it is required by the rules of the Department that you do; is it not?

A If not marked, concealed in an envelope and mark that.

Q And marke the envelope?

A Yes.

MR. THAU: Thank you.

MR. MITCHELL; Nothing, your Honor.

MR. REILLY: No further questions, your Honor.

THE COURT: You may step down.

Thank you, Detective Palmer.

(Witness excused.)

MR. REILLY: Your Honor, the understanding here is a stipulation forthcoming from the defense with respect to the fact that each of the three banks in question were insured by the Federal Deposit Insurance Corporation.

MR. THAU: That is so.

MR. MITCHELL: That is so, your Honor.

THE COURT: Very well.

MR. REILLY: That being the case, your Honor, the Government rests.

THE COURT: I will see counsel at the side bar.

(At the side bar.)

THE COURT: The defendants, as I understand it, gentlemen, wish to reserve the actual argument of their motions until after they advise the Court whether or not they wish to rest their case; is that correct?

MR. THAU: That is correct.

MR. MITCHELL: Yes, but without giving up our rights to --

THE COURT: You have reserved your rights just as if you had reserved the motions.

Now, is that satisfactory?

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MR. MITCHELL: Yes.

MR. THAU: Yes.

THE COURT: All right.

(In open court.)

THE COURT: Mr. Mitchell?

MR. MITCHELL: The defendant James Melvin Green rests, your Honor.

THE COURT: Mr. Thau?

MR. THAU: Defendant Debra Green rests, your Honor.

THE COURT: All sides have rested. Is that correct?

MR. MITCHELL: Yes, your Honor.

MR. THAU: Yes, your Honor.

MR. REILLY: Yes.

THE COURT: Tomorrow morning's time is one thing I want to check with you just for a moment. I don't know your schedules and I just want to check with you before I instruct the jury.

(Discussion off the record at the side bar.)

(In open court.)

THE COURT: Ladies and gentlemen, I have had a chance to confer with counsel. The jury will be excused in just a moment or two. You are directed to return to

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continue hearing this case tomorrow morning at 10 a.m.

Let me indicate for a moment what you have ahead of you tomorrow so you can plan accordingly. We plan to begin at 10 o'clock. You will hear the closing arguments or summations of counsel beginning at approximately that hour. The closing arguments will be followed by my charge which at my present estimate I would suggest will mean that the case will be given to the jury some time around midday. From that point on the jury will begin its deliberatins.

I have no way of knowing now how long or short your deliberations will be. Therefore I suggest that you indicate to your families that you may, may, be a little late tomorrow night. I don't know. And the reason I say this is, No. 1, I do not want them to worry and, No. 2, most important, I do not want you to deliberate under any pressure because your family does not know where you are. Therefore I instruct all of the jurors to indicate to their families that they will be engaged in deliberations on this case and that it might run to a somewhat later hour.

Ladies and gentlemen, as you are leaving tonight I will instruct you as follows:

No. 1, please do not discuss this case or the

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evieence in this case among yourselves or with anyone else as you leave the Court House, at your respective homes or as you return tomorrow. Should you learn anything bout the case from any source, any source whatsoever, you are directed to report the matter to me at once promptly upon your assembling tomorrow morning.

Finally, keep an open mind on all facets of rhe case. You still have to hear the summations by counsel and the charge by the Court. Therefore, there is still portion of the case to do. Keep an open mind until the case has been completed and given to you following my charge.

The jury is instructed to return tomorrow at 10. Good night, everyone.

ALTERNATE JUROR NO. 1: Will the alternate be dismissed?

THE COURT: If all the jurors are well.

MR. THAU: Would that be so only after the charge?

THE COURT: Yes.

The alternate jurors are excused by me when the jury is excused to deliberate on the case.

(The jury left the courtroom.)

THE COURT: Juror No. 10 has come forward as the

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other jurors were leaving the courtroom and has indicated to the Court that she observes the Sabbath and would be required to leave the Court House two hours before sunset.

I suggest, madam, that we consider this matter among ourselves and in the meantime I suggest that you tell your family, No. 1, that they should be prepared as a possibility that you'll be home somewhat late, but, No. 2, I will certainly see to it, and I know counsel will, that in no way will any of your religious customs and practices be violated. We will see to that.

JUROR NO. 10: I live two hours from my home.

THE COURT: I remember when you were selected you indicated that you were a resident of upper Manhattan. We know what your problem is.

Again, as I said to the others, please don't discuss the case with anyone, and we'll do what is right.

JUROR NO. 10: Thank you very much.

(Juror No. 10 left the courtroom.)

26 MR. THAU: In that area, I wonder, since a voir is not permitted in Federal Court but is in State Court, whether you would permit us a short voir dire of that lady. I'll tell you why:

I have had occasions in the State Court when a juror, again Jewish, has also raised this problem and

I have asked questions such as:

To do justice is really the greatest mitzvah -- as it is called in the Jewish religion -- you could perform. Certainly this very religious person sees it as a duty to sit on a jury rather than an inconvenience. I've had a man who insisted that he sit through Saturday.

THE COURT: This is a matter within the Court's discretion. My own feeling is that I would not want any juror to deliberate on this case under any mental pressure one way or the other and if we have three alternate jurors, I suggest that we take this matter up when we see where we are at the conclusion ofthe charge. We can consider this matter and we'll deal with it finally when I have concluded my charge? Is that satisfactory?

MR. THAU: Yes.

MR. MITCHELL: Yes.

MR. REILLY: Yes.

This afternoon some time the marshal escorting Mrs. Green unavoidably got into an elevator with Mr. Lee. He understands that he must have seen Mrs. Green in handcuffs. He got off at the fifth floor. He let Mr. Lee get off the sixth floor.

THE COURT: He seems to be an intelligent juror and one who I would suggest can judge the case fairly

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here.

Mr. Thau, you indicate now, having been advised of this by Mr. Reilly, that you will not make any application to excuse Mr. Lee?

MR. THAU: Right. I thank him for the disclosure.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No, I ask no instruction.

THE COURT: It has struck the Court, as I have observed the jury, that it is a bright, alert, intelligent jury and I think under the circumstances we should all thank Mr. Reilly for having brought the matter to the Court's attention and in view of the statements made by counsel we will leave this matter at that.

MR. THAU: Should anyone find fault with me or not asking that this juror be removed, there are two ways of looking at these things. I think that seeing a defendant in shackles may well visit pity upon the defendant rather than anything else. That is basically my view.

THE COURT: We will proceed to the argument of the motions which were timely made when the Government rested and in connection with which I indicated that all of your rights to make those motions would be reserved. I'll hear you at this time.

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I know that the defendants have been taken by the marshals from the courtroom. Since this is a purely legal matter that we intended to do at the side bar, I suggest that if there is no objection from either counsel we proceed to the argument of the legal motions.

Mr. Mitchell, do you have any objection to proceeding in the absence of Mr. Green?

MR. MITCHELL: No.

THE COURT: Mr. Thau, do you have any objection?

MR. THAU: No, your Honor.

THE COURT: Mr. Mitchell, you may proceed.

MR. MITCHELL: Under Rule 29, your Honor, at this time I move to dismiss Counts 1, 2, 3, 4, and 5, the five counts in the indictment, this being the end of the Government's case. I'm familiar with the rule which says that all facts have been testified to must be considered in --

THE COURT: In the light most favorable to the Government.

MR. MITCHELL: Right. However, without dropping Counts 1, 3 and 5 I want to raise two separate questions.

Counts 2 and 4, putting in jeopardy the life of another person by use of a dangerous weapon or device,

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to wit, a handgun, as to those counts the Government has failed to prove that this handgun is inoperable condition and therefore I think there is a failure of proof under Counts 2 and 4.

As far as Count 3 is concerned, which is the Lily Yu count, I think, your Honor, that Miss Yu, having failed to make an identifation, the mere picture in and of itself is not sufficient even under the most favorable rule to be submitted to the jury. That is on the preliminary motion at the end of the Government's case.

THE COURT: I suggest that if a person is engaged in a robbery and displays or points a gun to insure that he gets what he has come for and intends to produce fear in a person, the jury is permitted to infer from the facts that a gun pointed at a teller was loaded and capable of inflicting the deadly injury threatened by the one who employed it. I believe that what we must look to here is the effect of a person pointing what appears to be a gun at another person.

I don't believe that it is necessary that the gun be operable or that the Government need prove that the gun be operable. I don't see that as an element of any of the crimes charged in Counts 1 through 5 and therefore I deny your motion to dismiss Counts 1 through 5 against

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James Green, which was based on the premise that the Government failed to prove that the revolver was operative at the time of the three robberies in question.

MR. MITCHELL: Now, YOur Honor, if you deny that, then, at the end of the entire case, after the defendants' rested, I renew my motions made under Rule 29 originally and I further say that at this time, your Honor, you must consider the wording of the accusation against the defendant and it is "and put in jeopardy the life of another."

There has been testimony by either Charlene Churialla or Donna Morrison that they feared for their life. It is true that one ducked behind and another did something else, but there has been no testimony elicited and we have no proof here that it was a dangerous weapon.

THE COURT: I suggest that if Charlene Churilla was not afraid that the gun pointed at her would possibly be fired with an adverse effect upon her, she would not have ducked or fallen to the ground as she did. I think her actions demonstrate that she was in fear of being shot.

You mentioned Donna Rae Morrison. My recollection of her testimony is that she was frightened. She said so, if I recollect correctly, and was sufficiently

frightened to give up approximately $1400 to Mr. Green. I suggest that a bank teller would not ordinarily give $1400 to a passerby unless she was in fear for her safety. And I think the circumstances are sufficient for a jury to conclude that Donna Morrison was in fear.

Lily Yu, if my memory is correct as to her testimony, she being the first witness at this trial, indicated being quite frightened.

MR. MITCHELL: We have no problem with her. There was no gun used.

THE COURT: Your point is well taken. There is no similar count to Count 2 and Count 5 relating to Count 3. You are right and I will not proceed further with that point.

I think you did indicate, however, a view that the Government had not made out a prima facie case on Count 3.

Is that part of your argument here?

MR. MITCHELL: Yes, your Honor.

THE COURT: I would suggest that by direct and circumstantial evidence all of the elements are present which would permit the jury to conclude that there was an attempted bank robbery. The parties stipulated to the first element, which is that at the time in question the

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bank, in this case the First National City Bank, was a bank the deposits of which were insured by the Federal Deposit Insurance Corporation.

I suggest that the second count relative to attempt was made out by the testimony of Lily Yu. People came to her window and said, "This is a stickup. Don't push the alarm." I remember those words. There was certainly an attempt to stick up that bank by taking valuables in the form of money from that teller. This was unsuccessful, which makes it only an attempt.

The third element, of course, falls in with the attempt and the matter of force and violence comes, I suggest, from the utilization of the words "This is a stick-up."

That is not the same as walking in saying, "I am here to make a withdrawal."

Under the circumstances, I believe that although Count 3 is in this Court's view the weakest of the counts, there is a bare prima facie case against your client.

MR. MITCHELL: I have my exceptions.

THE COURT: Thank you, Mr. Mitchell.

Before we go to Mr. Thau, is there anything which Mr. Reilly wishes to add at this point?

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MR. REILLY: No, your Honor.

MR. THAU: I would reiterate all the arguments made by Mr. Mitchell and address myself to Count 3. I think that Count 3 was the only count in this indictment -- and based on the proof as to that to have been heard here, I think the Court would have to dismiss it out of hand.

THE COURT: I'm not sure the Government would have proceeded if they had a one count indictment with Count 3 alone, but I've made the ruling that there is a bare prima facie case. I feel that all the elements are there and taken in the light most favorable to the Government, which I must do at this point, I feel that the motion to dismiss Count 3 must be denied.

MR. THAU: This case is three separate trials within one, in a sense each bank being a separate one.

THE COURT: I don't quarrel with you on that score. That is why I have taken that count and indicated what I said about a bare prima facie case.

MR. THAU: We are all of us somewhat infected by the other two bank robberies in our view of this business. If you take it naked by itself you are dealing with a lovely teller who says:

"This couple came to me, this couple which I

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can't identify, about whom I can't tell you anything hardly, and there was a note, part of which said, 'This is a stickup.' I couldn't read the balance. And then the other member of the team said, 'Don't push the button. That is as I recall it.'"

That is all that she ascribed in the way of expressions to the defendants or to her visitors, let's say. Then when we have this disembodied photo of what looks to us and to the jury as perhaps our client not standing at the teller's window but standing a considerable distance from it -- if you look at these circumstances by themselves you haven't got a case. It is suggested because there was stronger proof on the first counts than on the last counts, because that is so, then we ought to draw certain unfavorable inferences on Count 3. I think that is unfair. I think that we should take it as it stands as though there were no other bank jobs and under those circumstances I think a dismissal would be mandated.

Thank you.

MR. REILLY: In response to that, your Honor, it is our opinion that actually Count 3 is much stronger than your Honor would credit it. Miss Yu gave a fairly good description of the assailants in terms of their physical characteristics, age, race, height, male, female,

use of a note. She also testified as to how she hit the button which activated the alarm, and we have here the full roll of film and we have the testimony of Mr. Higgins that these are the only two people that he found in reviewing that sequence, which was the only sequence with people in it which fit that description, two people together under the same circumstances.

I think on that basis alone that is a very powerful case. We have the two defendants right on camera. Furthermore, we have the circumstantial evidence from the time of their arrest where also the very same words were used:

"This is a stickup. Don't push no button", indicating that perhaps they had some trouble where people pushed buttons before.

So, for that reason, standing alone, we think that there is proof beyond a reasonable doubt against these two defendants.

THE COURT: I think defer, Mr. Reilly, only as to degree.

I have concluded that there is a prima facie case which has been made out on Count 3. Accordingly, the motion to dismiss made on behalf of each defendant is denied.

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MR. THAU: Thank you, your Honor.

THE COURT: Thank you, gentlemen. 10 o'clock tomorrow.

(Trial adjurned until June 18, 1976, at 10.00 o'clock a.m.)

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UNITED STATES OF AMERICA

vs. 76 Cr. 517

JAMES MELVIN GREEN and
DEBRA FENNELL GREEN.

New York, June 18, 1976;
10.15 o'clock a.m.

(Ttial resmed.)

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(Jury present.)

THE COURT: Good morning. We now proceed with the final three stages of the trial.

The first stage will begin as soon as I finish speaking with you, which will be the closing arguments of counsel. You will hear from Mr. Reilly on behalf of the Government, Mr. Mitchell on behalf of Mr. Green, and Mr. Thau on behalf of Mrs. Green, and then Mr. Reilly will, if he wishes, have the opportunity for a reply.

The second state, after we take a very short mid-morning recess, is the charge where I will instruct you on the law. You see, in the first stage the attorneys do their part and in the second stage the Court does its part. That leaves us with the third and final stage where you do your part, ladies and gentlemen. You will

have heard the evidence. You will have heard the summations, and you will have received my instructions on the law. It will then be up to you to deliberate on this case and to determine its outcome.

We will proceed now with the summations of counsel.

Mr. Reilly.

MR. REILLY: Thank you, your Honor.

Gentlemen of the defense, ladies and gentlemen of the jury:

It is the Government's burden in this case to prove beyond a reasonable doubt that these two defendants were guilty of the five criminal offenses charged in this indictment. I am satisfied, the Government is satisfied, that we have met that burden.

MR. THAU: I object to that.

THE COURT: Yes, whether you are satisfied at all matters not.

Ladies and gentlemen, the opinions of counsel on both sides and the opinion of the Court is irrelevant here. What is relevant is whether the facts and the law will result in your reaching a determination one way or the other.

Disregard any opinions expressed by counsel.

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MR. REILLY: It is your determination based on the evidence whether we have met that burden which counts. Anything that I say, anything that Mr. Thau says or any opinion that Mr. Mitchell has is totally irrelevant in the final determination a s to whether the Government has proved its burden that these defendants are guilty beyond a reasonable doubt.

In my closing statement I expect to be brief. I don't expect to take any more than 20 or 25 minutes. We are going to be brief because the Government relies only on the evidence in this case, no distractions, no opinions or anything else.

The evidence is simple, it is clear, and it has been straightforward. It has taken less than two days for you to hear it. After I sit down Mr. Thau and Mr. Mitchell will have their turn. I do not expect to interrupt their summations. I see no reason to have mine interrupted. I think you are entitled to learn from them what they think should be of significance to you in reaching a verdict. Anything that you can learn from them, anything that you can learn from the Goverment should be of some value to you in reaching your determination. If, however, they go beyond the line, I may be compelled to make some objections. I hope that I will not have to

do so.

It is the job of defense counsel, and these are both experienced and well qualified defense counsel, to minimize the impact of the Government's evidence that has been presented against their clients and to divert your attention from the damaging evidence against them and I can think of one example in this case, and there have been many. For example, when Miss Nora Palmer, the detective from the New York City Police Department, was on the stand yesterday we heard extensive cross-examination on the very vital issue of why she did not mark on that slip of paper which she had taken from the handbag of the defendant Debra Green her initials, the date, the time and other identifying information. All of these procedures apparently are required when you turn over evidence to the New York City Police Department Property Clerk. Of course, those are irrelevant matters. This evidence, as soon as it was observed falling out of Mrs. Green's pocketbook was examined by Miss Palmer. She did not turn it over to the New York City Police Property Clerk. She turned it over to the FBI.

Now, let us turn to the evidence at hand and as we review the evidence I have before me the indictment in this case, and you may consider the indictment. You

may ask for the indictment to be sent to you in the jury room to help you with your deliberations.

Count 1 charges an attempted bank robbery at the Manufacturers Hanover Trust Company at 1185 Sixth Avenue. You have ample reason to conclude beyond a reasonable doubt that there was a bank robbery at that bank. In fact, it would be difficult to come ot any other conclusion.

The issue that you must determine is whether these two defendants were present at the bank; whether they were the ones who attempted the holdup. Well, let's start first with the victim, the teller Charlene Churilla. She was one of the first witnesses in the case, if not the first. She testified that she came back -- that she was standing at her teller's station, which is at the corner of the teller's counter and there were only two tellers that day, she and Mr. White, who was a little bit further down. And there appeared two individuals, one a young black female who presented a note. She didn't present a withdrawal slip. She didn't present a check to be cashed, she presented a note and as this note was being transferred or handed over the counter only a few inches or a foot away, Miss Churilla went to take the note. Well, the black female, the young black female,

would not give it up. It was then that she read the note or at least something of the note which told her that it was a stickup and that Miss Churilla should hand over 50's and 20's.

Turning immediately to the left she saw a young black male. She didn't hand over the 20's and 50's. She closed her drawer, she did various other things. It was for a period of two minutes that she tried to divert these two bank robbers and ultimately she dropped down behind the counter.

Now, she had a strong and clear opportunity to see those two individuals who came to hold her up that day. They were not wearing masks. They did not have a bandana over their faces. They were only a very short distance away, actually a shorter distance than from me to the gentleman and ladies of the first row of this jury box. You cannot say that Miss Churilla's attention was diverted; that she was somehow lackadaisical or thinking about what she would be doing that night. She was presented with a bank note, with a threat and with a presence of a gun pointed at her. Is it likely that she is going to forget who presented this note to her, who was trying to hold her up?

You had the opportunity to observe Miss

to make an identification. It is for you to judge.

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Churilla and you should ask yourself the question:

Is she the type of person who is going to completely forget an incident such as that and the people who were involved? When she appeared on the stand she identified the defendants James Green and Debra Green without hesitation as the people who appeared at the bank that day, but there was more than one witness. There were two or three. There was Celinda Rivera, who was only standing six feet away. She turned to answer the telephone only six feet away. She saw, first of all, her co-worker crouching on the floor and when she looked up she saw these two defendants, and one of them, Mr. Green, was pounding on the counter yelling, "Come on, come on."

Gene White is a management trainee at the Manufacturers Hanover Trust Company. He was doing a stint as a teller at this particular branch. He was only 15 feet away from Mrs. Churilla, who was the next teller down the line. He observed two individuals. First of all, he observed a young black female milling around in the center of the customer area near the tax table. He took note, but it didn't particularly strike him as significant at the time. It only became significant when shortly thereafter he noticed that his co-

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worker, Mrs. Churilla, was having a tug-of-war over a piece of paper with that individual, then he noticed a male who was holding a revolver and that revolver appeared to be pointing down at his direction. There was nothing between Mr. White and these two individuals standing at the counter. The lights were probably better than they are in this courtroom today. When he appeared on the stand he identified James Green, who is sitting at this table, the second table here, as the man who was holding that gun.

He did not identify the female because he said that he did not get a good view and as is appropriate, he should not make an identification if he can't be sure, and he did not make that identification. His attention was, for good reason from his angle, focused on the man who was holding the gun.

You do not have to credit the testimony of three eyewitnesses, cumulative as that is, because one or two or three of these individuals pressed the alarm. They all testified that they did so, and, as you know, the alarm sets the camera, the surveillance camera running and these photographs, Government's Exhibits 2 and 3, which I will hold up to you and apologize for not having shown them to you before, depict at the counter a male and a

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female who I submit to you resemble in a very striking manner the two fendants in this case.

It is going to be your determination whether the two individuals pictured in this photograph are the same individuals about whom the three bank employees testified are the two individuals who sit before you in this case.

A second photograph shows -- I'll hold this up for a moment -- we submit, the two defendants leaving the scene of the crime. You have a clear view of the male. You have a side view of the female. Tkaing these pictures together there should be no doubt in your mind that James Green and Debra Green attempted to rob the Manufacturers Hanover Trust Company on February 25, 1976.

Count 2 charges these defendants with, in the course of committing that bank robbery at the Manufacturers Hanover Trust Company, assaulting and puting in jeopardy the life of another person through the use of a dangerous weapon, namely, a handgun.

The testimony of Charlene Churilla was that the male bank robber had in his hand a handgun. It was covered over, resting on the table and was pointing at her.

Gene White testified that he saw the handgun.

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Celinda Rivera, needless to say, was terrified by what was happening when the male started pounding the table and when she saw her co-worker crouched on the floor.

The Government submits that we have proved beyond a reasonable doubt that there was an assault here and that the lives of several persons were put in jeopardy through the use of a handgun.

Turning now to Count 3 and the second bank robbery the Government has offered evidence on, it charges an attempted robbery at the First National City Bank on West 57th Street. You had the testimony of Lily Yu, the bank teller. She was at work that day. The day was March 5, 1976. She was at station No. 4. Two customers appeared -- a familiar story told. The female presented a note. She read the note and saw that "This is a stickup."

Mrs. Yu by instinct or otherwise reached for the alarm. The male who was present there said, "Don't hit the alarm." Then he said, "She's hit the alarm. Let's get out of here," and they proceeded with determination to leave the First National City Bank. Fortunately there was no bank robbery. Fortunately there was no showing of a gun or anything of that sort. It was

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certainly fortunate for Mrs. Yu. But all of the elements of attempted bank robbery have been proved here.

Mrs. Yu had only 15 seconds, a very short time. What she remembered of the assailants was that they were about the same height, that they were black, that they were young, that it was a male and a female and they were together. That is certainly not enough to prove that these two defendants robbed the First National City Bank.

We would then ask that you return a verdict on that evidence. But the further evidence is that Mrs. Yu did sound the alarm and the evidence is that the sounding of that alarm started the bank surveillance camera in operation. That bank surveillance camera was located not beyond the teller's counter looking out into the floor area, but it was located at the exist door and it is not surprising then that we have in Government's Exhibit 1 a picture of a black female and a black male walking directly to the door which is pictured at the bottom. Here we have the word "door" and the teller at station No. 4 is marked with an X. Notice that there is an individual at the counter. Mrs. Yu testified that another person stepped up to the counter and she continued her transactions somewhat dazed, I'm sure, by the event. This picture like the other two pictures will be made available

to you. We submit that this is a photograph of James Green and Debra Green walking together with determination to the exit door of the First National City Bank after having unsuccessfully attempted to hold up Lily Yu at her counter.

Now, Mr. Thau in some trenchant cross-examination of the FBI witness who presented this photograph to you pointed out that there were other blacks in this picture and why hadn't the FBI foc used on those other individuals. For example, to the left of the picture there is the black male. This black male is standing alone and you will probably notice if you examine it closely that he is busily looking at the City Card Center to see how much money he has in his account. He doesn't look like he has a care in the world. Is this the picture of a man who has just attempted to hold up the bank and who now knows that an alarm has been sounded and that the police may be there in a matter of minutes?

Further, the witness Lily Yu described the fact that there were two people together. Well, there are other black females in the picture and they are pictured in the center of the picture. Why didn't the FBI focus on them? It should be clear to any of you, as it was to the FBI agent, that these are two children who appear

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aimlessly standing in the middle of the customer area waiting for a parent to complete some transaction or another.

If you have any doubt that the FBI for some reason or another failed to focus on other likely prospects in reviewing the names that were made available by Mr. Credell of Holmes Protection Service, then I ask you to take out this roll of film and the other roll of film which has been introduced in evidence, look at the frames, hold them up to the light and you'll see, first of all, that the first 15 frames show pictures of an empty bank. It is obviously a testing of the camera system.

The final sequence and the only sequence of relevance to you and the only sequence which Mr. Higgins examined is a picture of what happened after Miss Yu sounded the alarm.

Defense counsel have had an opportunity view these. We have not seen any indication that there were other suspects who matched the description given by Lily Yu.

We submit that we have proved Count 3 beyond a reasonable doubt on the hard evidence that is before you.

Count 4 charges a bank robbery at the National Bank of North America, the last bank robbery that you will

be considering in this case. In that robbery money did pass, $1400. The principal witness, the only witness from the bank and probably the only witness who knew anything about the bank robbery at that time was Donna Mae Morrison. She was one of the last witnesses to testify yesterday morning. I ask you to consider the testimony, the manner in which she gave it, the rather matter of fact recitation of what occurred and determine whether she likely identified these two defendants as the individuals who came up to her and demanded -- the female with the note, the gentleman with the gun in hand -- that the money be turned over. She had several minutes to observe them. She handed the money over. She had conversations. He told her not to hit the alarm. She didn't hit the alarm. Then, when they left she failed to hit the alarm or she tried to hit the alarm but it didn't go off. So there are no bank surveillance photographs in that case.

We have the description and we submit a very detailed and accurate description given by Miss Morrison, and her identification in this courtroom of the people who tried to hold her up.

Count 5, which charges the use of a handgun, has been proved. She testified that the male pulled

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out from the left side of his inside coat pocket a revolver and placed it in familiar fashion on the counter, and the bank robbery proceeded.

The question which defense counsel wishes to leave you with is this:

Isn't it possible that there has been somehow a grave mistake in this case? These bank tellers, they may have observed, they may, of course, have gone through a bank robbery or attempted bank robbery and they may have observed young black people, but for one reason or another they were really not able to call who the bank robbers were and they have mistakenly identified these two defendants who might look similar to but are not the robbers in question.

Government's Exhibit 7 and 8 should solve that question forever. When Detective Palmer arrested Mr. and Mrs. Green as they were walking on Broadway at 54th Street in the vicinity of the Chemical Bank and various other bank branches they were placed under arrest. The first thing about Mr. Green to be ascertained was whether or not he was carrying a weapon. He was, and Government's Exhibit 8, which was taken from his left waist area underneath his belt is among the most damaging pieces of evidence in this case against the defendant James Green.

Was Mrs. Green accompanying him on an idle visit to Broadway? Were they taking the air? Were they on their way to see a movie?

Government's Exhibit 7, which was taken from Mrs. Green's handbag -- is written on a savings account withdrawal slip of the Chemical Bank and does not state the normal information you might expect to find on such a withdrawal slip, amount of money, account number, et cetera, it merely says:

"This is a stickup. We have guns. I want all the money. Don't push no button."

Is this a mistake?

We submit that the identification given by the bank tellers in this case, the identification presented to you through the photographs that were triggered by the alarm immediately after these attempted bank robberies tells the story.

In sum, ladies and gentlemen, if you are convinced on the basis of this evidence that these defendants did commit these bank robberies and attempted bank robberies, then it is your duty to return a verdict of guilty.

THE COURT: Thank you, Mr. Reilly.

We will now hear the defendants' summations.

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We shall hear first from Mr. Mitchell in behalf of Mr. Green.

MR. MITCHELL: If your Honor please, Mr. Reilly, Mr. Thau, Madam Forelady, ladies and gentlemen of the jury:

My client is Mr. Green and I realize that the District Attorney has presented to you a substantial case for your consideration. However, his Honor in his charge will tell you about reasonable doubt, what it is, how it arises and among the ways that reasonable doubt can arise is from the evidence or from the lack of evidence.

Now, I'm not being critical either of the young lady detective or of the FBI, but a lot of things have bothered me in this particular case. As you recall, there was the testimoy, I believe, of Mr. Rivera about the male who perpetrated or attempted to perpetrate the robbery. Did the FBi come in after they got that story from the young lady and dust the counter for possible fingerprints? Completely missing, completely. The first principle of detection they don't do a thing about.

There are other things that bother me. There was a gun. The testimony by the witnesses as to a gun -- did any of the witnessed describe the gun? No. Now you say: Wy didn't I ask the witnesses about the gun.

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His Honor will tell you we don't have to prove anything. The Government has to prove guilt of each defendant on each count beyond a reasonable doubt. They have the burden of proof and it doesn't shift until they have convinced beyond a reasonable doubt.

The gun again. Does this gun work? Can it fire a bullet? If you pull the trigger it may work, but is there any evidence before you from the Police Department or from the Federal Bureau of Investigation tha this is a working gun? It becomes important because in Counts 2 and 5 the indictment charges "and put in jeopardy the life of another person by the use of a dangerous weapon or device, to wit, a handgun."

Well, you can't put a person's life in jeopardy if the gun doesn't work. All the evidence is in. That is missing.

And even the Government and Mr. Reilly is a little bit mistaken. He too can make mistakes as the tellers possibly can. He tells you that the first witness is Miss Charlene Churilla. It wasn't Miss Churialla. As you recall, it was Miss Yu. I mean, this is a little thing but if the District Attorney can make a mistake with all his training, what about the average person? People can look at other people and

say: Oh, I recognize them, but how many times have you passed somebody or said hello to somebody and it turned out it wasn't the person. It weas somebody that looked alike. You have read about look-alikes -- people, tellers under stress and strain -- we are not disputing that there were attempted holdups -- can make mistakes. But something happened here. I'm going into the clothing business in this case. I'm not concerned with the identification of my client or the supposed identification. I'm concerned with misidentification, because that too can raise a reasonable doubt.

First let's take Charlene Churilla. I will follow the District Attorney's office. When she was asked about what clothing the male wore she said, "He wore a cloth beige or brown coat."

I asked her whether there was a fur collar. No fur collar.

Miss Rivera. She even went further. She said she was positive that there was no fur collar on the holdup man.

In both cases I asked them whether they noticed whether there was anything wrong with the teeth of the alleged perpetrator. In both instances they said no.

Gene White, the third man. No fur collar.

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He wore a dark plaid coat.

Incidentally, as far as Miss Rivera is concerned, his Honor will tell you that if you feel that any witness deliberately lied you can disregard the entire testimony of that witness.

Now, Miss Rivera was nervous. No question about it. The worst case of nerves I've seen in many years on the witness stand. I don't know what she was nervous about and I odn't know how it affected her testimony, but there is one thing she lied about. She was asked specifically "Did you speak to either Miss Churilla or to Mr. White about the case?"

"Absolutely not. No, no, no."

You remember how she protested. Remember again White's testimony? He not only spoke to Miss Churilla but he spoke to Miss Rivera at least on five occasions. They discussed the clothing, the features of the holdup men.

I think that this unforunate Miss Rivera was one of these heroes on the spot. They had to get into the action. She discussed it with the others. She was going to throw her two cents in.

Now, having gotten up on the witness stand, she is caught and she had to make an identification. She has

to make an identification. It is for you to judge. I don't know went on in the mind of that poor young lady.

You say what difference does it make whether the person had a fur collar of not. It becomes very important because if you study Exhibits 2 and 3 very carefully you will see that the male was supposed to have perpetrated the attempted holdup and he is wearing a fur collar. You can't miss it. That is the one thing that stands out.

Oh, the District Attorney is going to say to you, in 1-A he is wearing a fur collar. That is the one where Miss Yu is supposed to have made the identification. What does Miss Yu say?

"The male wore a dark blue or black short leather jacket."

Now, she didn't even identify him, Miss Yu. She didn't know who the robber was, but one thing she was sure of, that whoever held her up or tried to hold her up wore a dark blue or black short leather jacket. Even if you believe that my client is in the bank, is he wearing a short dark blue or black leather jacket?

It isn't the number of witnesses that counts in a case. His Honor will instruct you on the law that you are the judge of the credibility of the witnesses not in the sense of whether they are lying but whether they can

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make the identification on what you have to determine the innocence or guilt of my defendant.

I say to you we go back a long time. We go back to the Magna Charta, twelfth century England. Before that time if a farmer's pig was stolen it was a question of how many witnesses he could bring in. If he brought in 20 who said that was his pig and the other fellow said it is mine and he only had 19, the majority ruled. That was justice before the Magna Charta. That was justice in medieval England. That was justice where if a person were murdered the king was the one to dispense justice. But he was only interested in justice if you were a fair-haired blue-eyed Saxon, otherwise you got not justice.

Now you can give justice to this defendant. I say to you that there are holes in the case; that we have no obligation, no duty and that the burden is always on the District Attorney.

Now, as far as the notice is concerned, I believe Mr. Thau will take care of it, but whether he does or not, what the District Attorney is trying to suggest to you is this:

It is the Chemical Bank and the withdrawal slip is a withdrawal slip demanding some money. There-

fore he says and he suggests to you, and I think it is ridiculous, that because there is a Chemical Bank in the neighborhood, which the detective was asked, therefore the female prepared a withdrawal slip on the Chemical Bank. In other words, if there were going to be a Bankers Trust Company withdrawal slip he would have asked the teller:

Is there a Bankers Trust Company in the neighborhood? It is ridiculous.

I say to you, ladies and gentlemen, that from all the evidence, the lack of evidence there is a reasonable doubt as to the guilt of my client, James Melvin Green, on all five counts, and I ask you to bring in that verdict.

Thank you.

THE COURT: Thank you, Mr. Mitchell.

We will now hear from Mr. Thau.

MR. THAU: If it please the Court, Mr. Reilly --

MR. MITCHELL: Your Honor, as I sat down I saw one note that I omitted to mention to the jury.

May I?

THE COURT: You haven't used up all your time. Mr. Thau has receded from the podium.

MR. THAU: I will yield 15 seconds to the learned gentleman of the defense.

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MR. MITCHELL: Thank you.

I think it was the last witness, Miss Morrison, who stated on cross-examination that the female was about two inches taller than the male, and I ask you to consider that in your deliberations.

THE COURT: Thank you, Mr. Mitchell.

Ladies and gentlemen, you will now hear from Mr. Thau in behalf of Debra Green.

MR. THAU: Thank you.

It has been a short case, a simple one, and yet in a sense a very complicated one, complicated because so much is at stake; complicated and complex and important because your decisions will affect the lives of each of these yount people sitting here at the defense table.

You may hear in the Judge's charge the phrase which we who pass our time in this business hear all the time, which is that the concept of a reasonable doubt, the phrase a reasonable doubt, ought not to be used by a juror as an excuse to avoid the performance of an unpleasant duty. Of course, the unpleasant duty referred to in that maxim would be the conviction of another person. It is not pleasant to convict someone else.

Well, in this day and agee when crime is rampant, danger lurks on every street corner and every guy

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and his brother may be armed with a gun or a knife and what-have-you, it may well be that the unpleasant or the difficult thing for a juror would be to acquit someone about whom that juror entertained a suspicion that that defendant was guilty, feeling that the defendant was probably guilty. It takes a lot of nerve and courage and intellectual honesty and civic virtue to have listened to evidence and to say to one's self, as some of you probably do right now:

I'm not going to mince words with you -- this woman probably had something to do with it and yet to honestly look at the evidence, analyze it critically, accord the reasonable benefit of the doubt and say:

But, damn it, while I do have suspicions, while i do find probabilities, I am not satisfied beyond a reasonable doubt, and under those circumstances to acquit, so it does take guts to acquit.

Now, you good people have been called at times the conscience of the community. That is what a jury is often referred to as. There is an old legend with which some of you might be familiar, a very beautiful legend, I think, the Legend of the Just and the Legend of the Just has it, as I recall it, imperfectly, I'm sorry, that there is one just person on earth and that this one

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just person embodies in himself and herself the sense of justice of mankind, and that there is a just man -- I think the legend is unfair, a sexist legend, I suppose for whatever it is worth -- and that there is a just man in every generation from the beginning of history to the present day, not a famous person, not even anyone whose name is known to most of us, and that that person carries within him the sense of justice which animates so very many of us, and in a very real sense it is my judgment that the jury system embodies that just man and person.

I would like to address myself very quickly to some of the remarks made by Mr. Reilly, who is criticizing in advance of having heard them some of the arguments which he felt we would make possibly because if he were defense counsel, as one day no doubt he will be, and an excellent one, those are the arguments he would make.

Mr. Reilly made very light of my examination of Detective Palmer about Exhibit 7, which is the note she claims to have found in Debra Green's pocketbook, and what does Mr. Reilly say? He says: Well, look, she was a city detective and had this been a State prosecution that undoubtedly the good detective would have taken the care and caution that she admitted from the stand was customary to take with every piece of evidence. You

label it, you identify it, you initial it. You preserve it in a Property Clerk's envelope so that ultimately there would be a complete and irrefutable chain of custody with respect to the integrity of their assertion that it was taken from my client.

Mr. Reilly says about all this:

Well, Detective Palmer knew that this was going to be a Federal prosecution and turned the thing over to an FBI agent. Therefore none of these requirements attached. Hence no initials, no labeling, no Property Clerk's envelope, none of the usual precautions attaching to our excellent New York City Police Department. If you think for a moment the FBI is less careful in its preservation of evidence and in its proof of continuity than the New York City Police Department, swallow that routine, swallow it hook, line and sinker. It is rank nonsense in my judgment.

Now, Mr. Mitchell I think referred to lack of proof and you be instructed that when considering the case you may consider not only the evidence you heard but also such lack of evidence which your common sense, your sense of justice, your critical senses suggest to you ought to have been supplied you, if they are to ask you to believe something beyond a reasonable doubt -- lack of

proof.

Now, Exhibit 7 is an exhibit intended to be devastating against my client. The thing fell out of her pocketbook, says Detective Palmer. What does it say?

"This is a stickup. We have guns. I want all the money. Don't push no button."

Very explicit, intended to picture this woman as one embarked on a series of bank robberies and no doubt headed coward another one with this pink piece of paper.

Are you convinced beyond a reasonable doubt that this fell out of this woman's pocketbook?

Let's look at it. We have Detective Palmer's word for it. Nothing in God's creation, especially in this day and age when we have been disabused of the notion, I hope, and forever, that to wear a badge, to hold a high office, to have all the outer trappings of respectability guarantees conscience and honesty. We have been disabused of those notions I hope. This lady detective says the note fell out Debra's pocketbook. And who was present? There were other cops present. There was in fact an FBI agent present, FBI Agent Eddie Roach, I think she mentioned, to whom she turned the note over.

Why weren't any of these witnesses brought who saw the seizure of Exhibit 7 from the pocketbook or saw

it fall out of the pocketbook as it was being emptied? Not a single such witness appeared before you. Why not? We don't know. This is a handwritten note, ladies and gentlemen.

Now, Debra Green hasn't sprung out of a bush in these last few months. She is a woman, as we all know, with a background, a history. We have all gone to school to one extent or another. She has left behind here, as all of us have, a long track of handwriting. If nothing else, it has been told to you in this case that she is the wife of James Melvin Green. Well, some of you are married. How does one get married? You fill out a marriage certificate. But we don't even to have to rely on marriage certificates. The police the FBI are equipped to give us handwriting analysis and I would ask to look at this note which might strike one as very damaging against my client. Look at it carefully. You are dealing with a very distinctive handwriting on this document. Why didn't they show that she had hand-written it, or perhaps that her husband did? That would be relevant also, that either one of them wrote that note.

Why didn't they show us fingerprint analysis on this note? Who cares? We tell you that it fell out of the bag. You buy it. Our word should be sufficient

for you. That is the position they are taking. It is rather cynical in this day and age. I suggest to you that there is ample doubt that this note ever fell out of this woman's pocketbook. Lack of proof in that area, a very serious lack of proof.

I will go a little bit to the witnesses. Basically you are dealing with three bank jobs, in the vernacular, two attempted robberies -- those would be the first two, February 25 and March 5, and then alleged consummated robbery March 8. I'll take them in their chronological order.

In part the prosecution relies in their case against my client on the testimony of Miss Rivera. She, you remember, is that lady who sat behind Miss Churilla or at least whose station was behind her and who was very upset on the stand.

Now, it may have struck some of you that I was unduly harsh with her; that I was taking joy, some kind of perverse joy in pressing her on some points. If that is your view of it, then I'm terribly sorry, but I had a legitimate function to serve in this case and that is to represent my client as best I can, and I would remind you that this lady had to call for a recess, so broken up was she, not during my examination but during Mr. Reilly's

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examination on direct.

I would also ask you to think back to her deportment, her demeanor, what you could gauge of her mental attitude toward this judicial process of ours. As the Court will tell you, in assessing the credibility of a witness you may take into account how a witness strikes you on the stand. Is a witness candid, open? Does that witness take a view of things: Look, let the chips fall where they may; I'll tell you what I know and I'll tell you what I don't know?

I suggest to you -- maybe you'll buy it or you may not -- that this lady was a rather hostile lady. There was a hard edge to her which had more in it than reliving an unpleasant incident which I'll suggest to you she didn't see. Why was that lady hostile in this fashion? Mr. Mitchell entered at it and I'd like to elaborate a bit.

Miss Rivera was some place behind Miss Churilla. No question about it. She saw her colleague under the counter. She learned from her colleague that there had been an attempted robbery. The FBI came in quick order and the cops or both, or either, and the most natural thing in the world happened between these bank people. The same thing as would happen between you people, all of

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us here, if we together had been present when some such incident took place. They discussed:

Did you see him? Did you see her? What did they look like? What did they do?

She may have well convinced herself that she saw something. She may have honestly thought that she saw something just as any of us who have been to a party or to an event with a wife or a husband or a friend and we then got home and discussed the party. The other person relates a certain incident that took place at the party and before you know it you can truly and honestly not say whether you have witnessed that incident yourself or heard that remark yourself in the original form or whether you have incorporated into what you think is your private knowledge because the other person has said it to you. I'm sure all of you have lived this sort of experience.

So the FBI comes and this lady gives them a statement about what she says she saw and buy giving the FBI a statement that very afternoon she has locked herself into a wave of follow-up incidents which require that she testify. After all, she told the cops she saw it. She gave descriptions. Why was she so upset?

You heard testimony that she had testified two or three days before and you saw her testimony here. At

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that Miss Rivera said that she had observed the two assailants from a seated position. Remember that the two assailants were on the other side of a five or so foot high counter and that she had not stood up from that seat until they were already out the door and there was a bit of a hassle over that in the early examination and Miss Rivera realized that the likelihood of her seeing from that position was sort of remote. So what does she do? She tells you here that she was standing at all times and at first denies having said the contrary two or three days before and then until she is confronted with the minutes and then she has to admit it. She knew that she had not seen it. That is why she was that upset. She didn't want to be examined. It is an embarrassing thing.

I'm not saying that her original statement to the cops was necessarily dishonest. She got trapped, so to speak. I've been overlong on her story. It doesn't really matter.

Before we forget Miss Rivera, however, Miss Rivera assisted in a most inartistic drawing, and that is Defendants' Exhibit A. You have a right to take it with you.

Defendants' Exhibit A suggests, if you buy the story she gave you on trial, that she was standing some

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five feet from a wall over there, which is represented by this wall over here on Government's Exhibit 2, when she stood for two or three minutes observing over the counter.

Now, you can use your own common sense with respect to where five feet from this wall it takes you along this line, wherever it takes you. I suggest to you that if Miss Rivera was there either seated or certainly standing up you would see Miss Rivera on this photo. Examine Exhibit A carefully.

"Customer" is written here. "Charlene" is written here. Desk, typewriter, five feet, telephone (indicating).

Examine Exhibit A carefully. Examine Exhibits 2 and 3 carefully. Look for Miss Rivera there.

Now, with respect to these two photos about which Mr. Reilly says that they prove undeniably and beyond a reasonable doubt that these two defendants appear there, you judge that for yourself. In 3 both people, both faces are rather blurred. In 2 there is a pretty good view of the right profile and a part of the front of what appears to be a female. You should judge whether beyond a reasonable doubt that is Debra Green. Assume you do conclude that is Debra Green -- assume you do for the moment. I'm not conceding that it is her. What is

this woman supposed to have done on February 25? To have walked up to a counter, to have exhibited a note, not to have said a word, not to have pounded on the table, not to have possessed a gun.

In connection with the gun, let's never forget that on two separate occasions in this case it has been testified to you that this ever-silent woman, whoever she be, that this silent woman stands to the left of a man who holds a gun in his right hand, same choreography, enough. The man is at the counter, holds a gun in his right hand and invariably the woman is to his left. The woman is silent. She makes no demand. She gives no orders to her partner ever. She seems to be like the dummy some of us may have seen who announces the acts, comes out on stage with a big card, you know: Act 2, Scene 1.

And consider, consider in the event you should think beyond a reasonable doubt -- and I'm not asking you to do so -- that the woman in the bank is Debra Green and the man is her husband, consider whether it is at all possible that the wife takes the vows to love, cherish and obey -- I think that is the way it used to be; I don't know how it is any longer -- whether obedience referred to in that vow is not sometimes endorsed by the would-be

head of the household.

I put it out to you for your consideration, and that is why these defendants have separate lawyers.

Count 3, Mrs. Lily Yu, Exhibit 1-A, the young black couple walking towards you in the picture. You have three cases here, three completely disembodied cases, and I suggest to you that if this Count 3 were not bracketed with Miss Churilla's case on the one hand, Miss Morrison's on the other hand the Government wouldn't have the nerve to make the argument it has to you. They are hoping that the somewhat stronger proof on the other two cases will affect this case as well so as visit upon it some kind of credibility that these people are undeniably the ones who were at Mrs. Yu's counter.

Mr. Reilly, in a very clever, consummate bit of sophistry, concentrates on this picture and this picture alone of all the frames contained in the two rolls: Look at that. Thau made a good deal of this guy, this kid who looks at his City card and at the two cute kids in the background.

You remember my examination of the agent concerning the frame that he had printed. It was not so much whether there were other black people on this one lone picture but whether in the entire reel there were

people other than cute little kids. And he says, and I remind you of Mr. Mitchell's argument on that point, he says: Look, I had Mrs. Yu's description of these two and it is based on her description that I picked out the most likely people. Mr. Mitchell could not have put it more succinctly when he said Miss Yu's description has the male wearing a short leather jacket. So what does your FBI agent do? He goes through the reels very carefully, as an FBI agent is supposed to, and as the most likely prospect on both reels to print, because he fits the description, we get a guy with a maxi coat, a maxi coat, obviously not made of leather, with a handsome fur collar. That is a selection for you.

So what this picture shows beyond a reasonable doubt, I don't know. Possibly you may find that these defendants were on the premises. It doesn't show that they were at the counter and it doesn't show an artist selection by the FBI agent.

I'll be through in one instance, I promise you. We come to the last and third job, which is the only one in which money was taken. In the first two no money was taken. Isn't it interesting, isn't it coincidental that it is on that job, the one where money was taken allegedly that somehow the alarm didn't work? The teller who

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testified, Miss Morrison, and who was the only witness on that job, struck one as a very intelligent, very alert young woman, yet somehow the thing malfunctioned or she malfunctioned, who knows. No photos, no surveillance shots there.

Again, basically the same routine: the woman shows the note, the man shows the gun, give him the money.

Now, this incident took place about a week before our clients' arrest. March 12 was the arrest and March 8th was the robbery.

You may ask yourselves if $1400 was recovered from the assailants, was any part of it in the possession of these defendants when they were arrested. There is no evidence concerning that. There is no showing that the numbers of the bills had been pre-recorded. Nevertheless, as to whether either one of these two possessed unusually large amounts of funds in their pockets, there is no evidence of that. I remind you that the gun, Exhibit 8 has been received in evidence against James Melvin Green alone and that when receiving this in evidence the Court instructed you that you were not to consider that finding of that gun on Green in your deliberations of Debra Green's fate.

I trust that you will take that admonition to

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heart. It is very difficult to separate evidence into two compartments; that you will consider it against this crime, but not against this one, but on your oath as jurors you are obligated to do so.

I think I have been overly long, as I always am, yet after I sit down I will kick myself for not having said things I might have said and that would have convinced you immediately.

You are here to render justice, justice as you see it in your minds, in your hearts. You are here to render verdicts, separate and distinct verdicts as to each defendant, verdicts with which each of you should be able and willing to sleep for the rest of your days.

I remind you of the old adage and because it is old it doesn't make it any less true, that better you acquit a guilty person, far better you acquit a guilty person or a thousand guilty persons than you convict one innocent person, one person about whom you honestly can entertain a reasonable doubt.

I will finally ask each one of you not to be pressured by time, by numbers and to voting any way except the way your conscience, your individual conscience dictates, and I cannot ask for more.

I thank you for your attention. I apologize

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for my length. As to Debra Green, I ask you to return a verdict of not guilty on every count.

Thank you very much.

Thank you, your Honor.

THE COURT: Mr. Reilly, you may proceed with your rebuttal.

MR. REILLY: Thank you, your Honor. I was very depressed as I'm sure you were with the eloquence of Mr. Mitchell and Mr. Thau. I think they are excellent attorneys. I think they have done a fine job trying to minimize the testimony offered against their clients. I ask you one thing in reaching your determination, that you apply the common sense that you have brought to this coutroom in weighing the evidence and not to be worried about certain mystical qualities, sacramental qualities that have been at one time or another offered to you as problems of the case. You are fact finders. It is your determination to sit down in an unbiased fashion with the weight of your experience over many years and to determine whether in fact these two people did commit the three bank robberies and the attempted bank robberies that are alleged in this indictment.

Mr. Mitchell spent a great deal of time focusing on the clothing that Mr. Green wore, whether it was a fur

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collar on a long coat not a short jacket. Just remember this, that all of these eyewitnesses were bank tellers. They were standing or sitting behind a counter. For the most part they could only see from just below the shoulder up. Now, perhaps if they did focus their attention on clothing they might very well have determined that there was a collar there or a fur collar or they may have been able to give us a nicely detailed description of the pattern or how long it was. I submit to you that the thing that was closest to them, the thing that was most vibrant to them, the thing that was most important to them was the facial, the physical features of the two people standing before them, one with a gun and one with a note.

Ask yourselves whether those bank tellers gave you adequate descriptions of the physical features and did they have an adequate recollection of the physical features, especially of the faces of the two assailants.

I would just like to take one moment to talk about Celdinda Rivera. I, on my direct examination I don't think asked more than three very straightforward questions before she broke down in tears and had to be excused. She was not being harassed. She was being asked to recall what to her must have been a most terrifying and unpleasant situation. She was face-to-face in

the courtroom with the two people that she recalled as having been there, one of them pounding on the teller's counter while her co-worker was down on the floor crouched.

Put yourself in her position and ask what kind of reaction might you have or might a person of her temperament have if presented with the prospect of testifying in this case. She didn't come down here to put her two cents into the matter. The last thing in the world it would appear that she desired to do was to come down and give testimony in this case. She wanted to forget the entire incident. It was extremely upsetting to her.

Mr. Thau has elicited what appeared to be contradictions I think you might consider whether she was confused, whether she became hostile of what she considered abusive treatment by a bystander as one who has been subjected to an intense emotional experience that she didn't care to have. If you are not convinced of that perhaps you shouldn't credit her testimony and then I ask you to put her testimony aside and consider the testimony of Charlene Churilla, who was a teller in this case and who looked at both of these assailants straight in the eye and who was closest to them.

I ask you to consider the testimony of Mr. White and the two photographs and if you still have a

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doubt, then you should acquit these two defendants.

It is a most unpleasant duty, that is, what you are called upon to do when the evidence suggests that these two defendants are guilty. I can predict that it is not going to be a pleasant task, that is going to be hard work. We ask you to follow through to your verdict. I cannot thank you for your verdict in advance or even afterwards because I get no satisfaction from it. It is you who must get satisfaction in having performed a duty conscientiously and the way that the evidence dictates that it be done.

THE COURT: Thank you, Mr. Reilly.

Ladies and gentlemen, you have now heard the summations of counsel. We will take our mid-morning recess of ten minutes. Please do not discuss the case among yourselves at this time. When you have returned I will give you my instructions on the law and after that we'll turn the case over to you for your consideration.

Please continue to keep an open mind on all facets of the case until the entire case has been concluded following my charge.

The jury is excused for a ten-minute recess and the charge will follow.

(Recess.)

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we now come to that stage of the case where the evdidence is in. The lawyers have presented their final arguments and you are about to do your part in the administration of justice, which is to pass upon and to decide the fact issues.

You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence, and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law which is applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as you find them. The logical result of that application of the law to the facts is the verdict in the case.

With respect to any fact matter it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defense, may have said with respect to matters in evidence during the trial in the form of questions, in exchanges with the Court, in argument, in opening or in summation is not to be substi-

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tuted for your own recollection of the evidence. So, too, anything I may have said during the trial or may refer to during the course of these instructions as to any factual matter in evidence is not to be taken in place of your own recollection.

Testimony and exhibits to which the Court sustained an objection or which were ordered stricken from the record do not constitute evidence and must not be considered by you. Evidence which was admitted against one or the other defendant must be considered only against that defendant and not against the co-defendant. This case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into between counsel -- you will recall there was one, that the banks involved here were banks whose deposits were duly insured by the Federal Deposit Insurance Company, as I remember the stipulation. The case must be decided upon, as I say, the sworn testimony of the witnesses, any stipulations entered into between counsel and such exhibits as were received in evidence.

As I indicated to you earlier, should you wish to hear any of the testimony, or I'll add now any part of my charge, you may so request by sending a note from the jury room that any portion of the testimony or any portion

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of my charge be read back to you. You will then be brought back into the courtroom and whatever you have requested will be read to you.

Should you wish to see and study the indictment or any exhibit or exhibits in evidence, whatever you request, a copy of the indictment or any or all exhibits in evidence, will be sent in to the jury room upon your asking for them, and the manner in which you will do this will be by a note which you will send out from the jury room: We want this or we request that. We will try to respond to any notes as promptly as possible.

The charges against the two defendants on trial before you are contained in an indictment. I instruct you that the indictment is merely an accusation. It is a charge. The indictment is no evidence or proof of the defendants' guilt. The two defendants on trial before you have pleaded not guilty. Therefore the Government has the burden of proving each and every element of the charges against each defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the Government throughout the entire trial.

A defendant under our system of law does not have to prove his or her innocence. On the contrary, the defendants are presumed to be innocence of the accusations

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contained in the indictment. This presumption of innocence was in each defendant's favor at the start of the trial, continued in their favor throughout the trial, is in their favor even as I instruct you now. It remains in their favor during the course of your deliberations in the jury room. It is removed only if and when you are convinced that the Government has sustained its burden of proving the guilt of a particular defendant -- and you will consider each defendant separately -- of proving the guilt of a defendant beyond a reasonable doubt.

What is a reasonable doubt? It is a doubt based on reason which arises from the evidence or lack of evidence in the case. It is a doubt that appeals to your reason, to your judgment, your common understanding and your common sense, such as would cause prudent men to hesitate to act in matters of importance to themselves.

A reasonable doubt is not caprice or whim or speculation. It is not a doubt that you might conjure up to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

I instruct you that it is not necessary for the Government to establish the guilt of a defendant to a mathematical certainty or beyond all possible doubt. If that were the rule, few people, however guilty they might

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be, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough to convict if proof of a defendant's guilt be established beyond a reasonable doubt, not beyond all possible doubt.

The indictment in this case contains five counts. It charges the two defendants, James Melvin Green and Debra Fennell Green in Counts 1, 3 and 4 with committing three bank robberies in Manhattan during late February and early March of 1976.

Count 1 relates to an alleged attempted robbery by the two defendants at a branch of the Manufacturers Hanover Trust Company at 1185 Avenue of the Americas on February 25, 1976.

I shall read Count 1 and I will remind you that this is an accusation. It is not proof. It is the charge leveled against the defendants.

Count 1:

"The Grand Jury charges:

"On or about the 25th day of February, 1976 in the Southern District of New York, James Melvin Green and Debra Fennell Green, the defendants,

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unlawfully, wilfully and knowingly by force, violence and intimidation did take and attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody, control, management and possession of the Manufacturers Hanover Trust Company, 1185 Avenue of the Americas, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation."

This is charged as a violation of Title 18, United States Code, Sections 2113(a) and 18 United States Code, Section 2.

Count 3 relates to an alleged attempted bank robbery by the two defendants at a branch of the First National City Bank located at 40 West 57th Street on March 5, 1976.

Count 3 reads as follows:

"The Grand Jury further charges that on or about the 5th day of March of 1976 in the Southern District of New York, James Melvin Green and Debra Fennell Green, the defendants, unlawfully, wilfully and knowingly, by force, violence and intimidation did attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody and

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control, management and possession of the First National City Bank, 40 West 57th Street, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation."

It is alleged that the same sections which I mentioned a moment or two ago were violated in connection with Count 3.

Count 4 relates to an alleged robbery by the two defendants at a branch of the National Bank of North America at 515 Seventh Avenue on March 8, 1976.

Count 4 reads as follows:

"The Grand Jury further charges on or about the 8th day of March, 1976 in the Southern District of New York, James Melvin Green and Debra Fennell Green, the defendants, unlawfully, wilfully and knowingly by force, violence and intimidation did take and attempt to take from the person and presence of another money and property which then belonged to and was in the care, custody, control, management and possession of the National Bank of North America, 515 Seventh Avenue, New York, New York, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation."

The same two sections are charged as having

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been violated in Count 4 as were charged in Counts 1 and 3.

With respect to two of these robberies, the attempted robbery at the Manufacturers Hanover Trust Company, and the attempted robbery at the National Bank of North America, the indictment charges additionally that the two defendants committed the crimes involved in those two counts by assaulting and putting in jeopardy the lives of others by the use of a handgun.

Count 2 relates to the Manufacturers Hanover Trust Company robbery as I've said, and Count 5 relates to the National Bank of North America robbery.

I shall return to Counts 2 and 5 in a few minutes.

I mentioned two statutes. The defendants are charged in Counts 1, 3 and 4 with having violated Title 18, United States Code, Section 2112(a) and Section 2 of the same Title 18, United States Code.

Section 2113(a), which provides:

"Whoever, by force and violence or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank" --

now I interpolate -- is guilty of a crime.

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As I have noted, the defendants are also charged with violating Title 18, United States Code, 2 which provides:

"Whoever commits an offense against the United States or aids, abets, counsel, commands, induces or procures its commission, is punishable as a principal."

In order to find a defendant guilty of bank robbery as charged in Counts 1, 3 and 4 of the indictment the following four elements must be proved beyond a reasonable doubt:

First: That at the time in question the bank involved was a bank the deposits of which were insured by the Federal Deposit Insurance Corporation.

As I have noted previously, that matter has been stipulated to and there is no issue that the banks in question were banks the deposits of which were insured by the Federal Deposit Insurance Corporation.

I turn now to the second, third and the fourth elements.

Second: That on or about the date charged the defendant -- the defendant you are considering and, as I say, you should consider each defendant separately -- the defendant took money which belonged to or was in the care,

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custody, control, management or possession of that bank.

Third: That the money was taken from the person or presence of one or more persons other than the defendant; namely: from employees of the bank.

Fourth: That the defendant accomplished this taking by force and violence or by intimidation.

As I noted previously, the first element has been stipulated. I turn to the second and third elements. I charge you that that with respect to Counts 1 and 3 there has been no evidence that any money was taken from these two banks. However, the indictment charges additionally an attempt to take money from these two banks and the statute which I read to you a short time ago likewise makes it a crime to attempt to commit the offense.

Thus, if you find beyond a reasonable doubt that a defendant attempted to commit the offense, the elements of which I have already outlined for you, you may return a verdict of guilty even though the defendant failed to obtain any money.

As I pointed out, no money was obtained from the alleged bank robberies at the Manufacturers Hanover Trust Company and the First National City Bank. There is testimony that approximately $1400 was obtained from the third robbery, the National Bank of North America.

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I have mentioned to you the first element. I have discussed briefly the second and third elements. Let me turn now to the fourth element. The fourth element which I mentioned a moment ago is that the defendant accomplished this taking or I'll add the words attempted taking by force and violence or by intimidation. I charge you that with respect to that fourth element the Government is not required to show that force and violence were actually used against anyone if it proves beyond a reasonable doubt that the taking was the result of intimidation, that is, the result of placing another person or persons in fear. Intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary run of human beings.

So that if it happens that some extraordinarily timid person was put in fear by some sort of words or action that would not normally frighten anyone, this would not be the kind of an intimidation with which the statute is concerned.

On the other hand, if the proof shows conduct by a defendant which normally would be expected to generate fear, then it is not necessary that those affected should actually have experienced some terror or panic or hysteria. The question, in short, in this respect is an objective one;

it is whether the Government has sustained its burden of showing conduct of the accused which was of such a nature as to be a sensible and expectable basis for the creation of fear.

In Counts 2 and 5 the defendants are charged with a violation of Title 18, United States Code, Section 2113(d), which makes it a separate and distinct crime to commit the offense charged in Counts 1 and 4, namely a bank robbery, if in the commission of such an offense the person accused "assaults any person or puts in jeopardy the life of any person by the use of a dangerous weapon or device . . ."

I shall now read Counts 2 and 5 of the indictment to you:

Count 2:

"The Grand Jury charges on or about the 25th day of February, 1976 in the Southern District of New York, James Melvin Green and Debra Fennell Green, the defendants, in committing and attempting to commit the defense charged in Count 1 of this indictment did assault and put in jeopardy the life of another person by the use of a dangerous weapon or device, to wit, a handgun."

The statute which is charged to have been

violated is Title 18, United States Code, Sections 2113(d) and Title 18, United States Code, Section 2.

Count 5, the last count of the indictment, reads as follows:

"The Grand Jury further charges on or about the 8th day of March, 1976 in the Southern District of New York James Melvin Greena nd Debra Fennell Green, the defendants, in committing and attempting to commit the offense charged in Count 4 of this indictment did assault and put in jeopardy the life of another person by the use of a dangerous weapon or device, to wit, a handgun."

This is charged to be a violation of Title 18, United States Code, Sections 2113(d) and 18, United States Code, Section 2.

In order to find a defendant guilty on Counts 2 and 5, you must find that the defendant committed the crimes charged in Counts 1 and 4 respectively. If you find a defendant not guilty on Count 1 you mu : automatically find the defendant who you found not guilty on Count 1 not guilty on Count 2. Likewise, if you find a defendant not guilty on Count 4, you must find that defendant not guilty on Count 5.

If you find a defendant guilty on Count 1 or

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Count 4 you then go on to consider the following: In addition to finding the defendant guilty on Counts 1 and 4 respectively, you must also find beyond a reasonable doubt that the defendant in so doing either assaulted one or more persons or by the use of a dangerous weapon, to wit, a handgun, put in jeopardy the lives of one or more persons.

You will recall that I told you that the gun which is alleged to have been taken from James Melvin Green must not be considered in any way in connection with your consideration of the case against Debra Fennell Green.

Let me explain to you what is meant by assault and putting the life of a person in jeopardy. As I have indicated, Counts 2 and 5 require a finding either, one, that there was an assault or, two, that the lives of one or more persons were placed in jeopardy by the use of a dangerous weapon. It is not essential to find both an assault and an endangering of lives by the use of such weapon.

In considering this you will have in mind and undertake to remember and apply the legal definition of the word assault. That word is defined to refer to an unlwful attempt or threat to apply force and violence, to inflict bodily injury, when the attempt or threat is

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coupled with an apparent present ability to carry it out, such as to arouse fear in the intended threatened victim that he would be subject to immediate physical injury.

An assault as it is defined In law may be committed without actually touching or striking or doing bodily harm to the person in question.

You will recall that it is alleged by the Government that when the defendants got to the tellers' counters Mr. Green had a revolver and Mrs. Green had a note. You should consider the revolver when you consider the case against Mr. Green,and not the note. You should consider the note when you consider the case against Mrs. Green, and not the revolver.

I will give an example at this point. The pointing of a pistol or gun at another person for the purpose of putting that other person in fear is sufficient to constitute an assault.

You will recall that I mentioned to you moment or two ago that even if you find no assault in connection with Count 3, this count may be established if you find that the lives of one or more people were put in jeopardy by the use of a dangerous weapon. To justify such a finding in this case you must be convinced beyond a reasonable doubt that the defendant you are considering --

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and you will consider each defendant separately and the evidence against that defendant separately - carried one or more firearms which were drawn and loaded. It is not essential to such a finding that there be direct evidence that shows this firearm was in fact loaded.

If a person is engaged in a robbery and displays or points a gun to insure his demand and intends to produce fear in a person or persons, you are permitted to infer from such facts that the gun was loaded and capable of inflicting the deadly injury threatened by the one who employed it.

I mentioned Title 18, United States Code, Section 2, aiding and abetting. I charge you that it is not necessary for the Government to show that a defendant, Debra Green, physically committed the crimes alleged in the indictment itself. Section 2 of Title 18, United States Code, which I read to you a few moments ago, provides that a person who aids and abets another to commit an offense is just as guilty of that offense as if that person committed it himself.

Accordingly, you may find the defendant Debra Green guilty of the offense charge if you find beyond a reasonable doubt that James Green committed the offenses and that Debra Green aided and abetted him.

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To determine whether the defendant Debra Green aided and abetted the commission of an offense, you ask yourselves these questions: Did she associate herself with the venture? Did she participate in it as something she wished to bring about? Did she seek by her action to make it succeed? If she did, then she is an aider and abettor.

I turn to another subject, the credibility of witnesses. How do you determine the truth and how do you appraise the credibility of the witnesses?

Well, you use your plain, everyday common sense. You have seen the witnesses. You have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you again apply your common sense and your everyday experience.

You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. Interest is a factor, however, which you may consider in determining the weight and credibility to be given to a witness' testimony.

If any witness has wilfully testified falsely to a material fact, you may disregard all of that witness'

testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such weight, if any, as you may think it deserves.

Turning to another subject, direct and circumstantial evidence, you have heard me refer to direct evidence and to circumstantial evidence, and it is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness testifies to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his own senses. Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

Stated somewhat differently, circumstantial

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evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

Let's take one simple example, one which is often used in this Courthouse, to illustrate what is meant by circumstantial evidence.

We will assume, as was the fact, that when you entered the Courthouse this morning the sun was shining brightly outside and it was a clear day; there was no rain.

Now, assume that in this courtroom the blinds are drawn and there are drapes over the windows and the drapes are closed so that you cannot look outside. Assume that you are sitting in your jury box and despite the fact that it was clear and dry when you entered the building somebody walks in the door of the courtroom opposite your jury box with an umbrella dripping water, followed in a short time by another person wearing a raincoat and the raincoat is wet and is also dripping water.

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Taking our assumptions, you cannot look out the windows to see whether it is raining or not, and if you are asked, "Is it raining?" you cannot say you know directly of your own knowledge and observation; but certainly upon the combination of facts as I have given them, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now. That is about all there is to circumstantial evidence. You infer on the basis of reason and experience from an established fact the existence of some further fact.

I turn to another subject. The defendants have chosen not to take the witness stand and testify on their own behalf. There are many reasons why a defendant may decide not to testify. You should not speculate as to why the defendants here did not testify. You may not draw any inference whatsoever from anyone's not taking the stand and testifying.

Under your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to

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determine the guilt or innocence of each defendant separately solely on the basis of such evidence and the law.

Each defendant is entitled to have his or her guilt or innocence as to each of the crimes charged determined from that defendant's own conduct and from the evidence which applies to that defendant as if he or she were being tried alone.

If you find that a defendant is guilty beyond a reasonable doubt of any of the crimes charged in the indictment, a verdict of guilty as to that count should be returned as to that defendant. The guilt or innocence of any one defendant of any of the crimes charged should not influence your verdict regarding the other defendant.

It should also not influence your verdict regarding the other charges, except to the extent that you find one or both of the defendnats not guilty of the attempted bank robberies, then, as I have indicated, you must find them not guilty of the related charges in Counts 2 and 5.

You may find either one or both or neither of the defendants guilty. You may find one or the other or both of the defendants not guilty.

You are to decide this case upon the evidence and the evidence alone, and you must not be influenced by

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any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

There will be 12 people on the jury as you go in to deliberate. Any verdict must be the unanimous verdict of all of you. I will point out, however, that no one should enter upon the deliberations in the jury room with such pride of opinion that he or she would refuse to change it if convinced by intelligent argument on the part of another juror or jurors that they are right.

However, you are not to do violence to your own well founded opinions and common sense. You will be taking your common sense into the jury room. I expect that when you come out of the jury room your good common sense and your good conscience will accompany you.

You are entitled, each of you, to your opinion. In other words, each of you must decide the case for himself or herself after thoroughly reviewing the evidence and exchanging views with your fellow jurors. After you have exchanged your views, you should consider each defendant separately and each count separately, and vote guilty or not guilty upon each count separately.

14 I shall designate the juror seated in Seat No. 1, Miss Evangelina Nonis, as your forelady. She will keep

the tally on the vote and she will see to it that the notes are prepared. They may be written out by other jurors, but she will see to it that they are prepared and given to the Marshal who will be given charge of the jury. He will be outside of your jury room and will be available to you and he and the notes will serve as your means of communicating with the Court during the time you will be deliberating on this case.

Ladies and gentlemen, I have completed my charge. Before sending you in to deliberate I will inquire of Jurors 1 through 12 if each and every one of you feels well, feels in good health, both physically and emotionally, and whether you are prepared to deliberate on this matter without any pressure upon you of any kind and nature and description. If any juror does not meet all of these qualifications I would ask that juror to raise his or her hand at this time.

Noting the lack of any hands being raised I will at this time ask our three alternate jurors to obtain whatever belongings they have from the jury room and to return to the courtroom, because after I speak with counsel I will be sending Jurors 1 through 12 into the jury room to begin their deliberations. At that time I would like to thank our three alternate jurors who have served

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diligently and conscientiousLy from the beginning of this trial.

At this time I will see counsel at the side bar. I will ask Jurors 1 through 12 to remain in the jury box in the event that I have some further instruction for you. The three alternate jurors are excused to go into the jury room and obtain any clothing they have there and then to return to the box.

(At the side bar.)

THE COURT: Are there any exceptions to the charge?

Mr. Reilly?

MR. REILLY: The Government has no exceptions, your Honor.

THE COURT: Mr. Mitchell?

MR. MITCHELL: None.

THE COURT: Mr. Thau?

MR. THAU: No, your Honor.

THE COURT: Are there any requests for supplemental instructions?

Mr. Reilly?

MR. REILLY: No, your Honor.

THE COURT: Mr. Mitchell:

MR. MITCHELL: Your Honor, I was wondering

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whether since there are separate robberies you would instruct the jury that considering the guilt or innocence on each particular robbery of the defendants that they limit themselves to the evidence on that particular robbery or anything that may be attributed in general to all three robberies. The note would be admissible on each robbery.

THE COURT: Do you have a suggested request?

MR. MITCHELL: That in considering the three robberies you consider only the evidence that has been admitted as against that particular robbery by the witnesses and the evidence.

THE COURT: Does that satisfy you?

Would this satisfy you, Mr. Mitchell:

In considering each of the three robberies you should consider only the evidence relating to that robbery in your consideration of the particular count on which you are then deliberating?

MR. MITCHELL: Right.

(Pause.)

MR. REILLY: I think you ought to cover Mr. Mitchell's other suggestion, that the circumstantial evidence consisting of the note and the gun found on the defendants be considered in connection with each count on robberies

or attempted robberies. There is a negative implication that that evidence should not be considered ultimately with any robbery.

THE COURT: I will add these words:

Only the direct and circumstantial evidence. I will modify it in that way. I propose to charge this way:

"In considering each of the three robberies you should consider only the direct and circumstantial evidence related to that robbery in your consideration of the particular count on which you are then deliberating."

Is that satisfactory to the defendants?

MR. MITCHELL: Yes. Thank you, your Honor.

THE COURT: Mr. Reilly?

MR. REILLY: Your Honor, I think there is enough confusion on the matter as to circumstantial evidence. You should include the note and the gun found at the time of the arrest.

THE COURT: There are problems that I suggest exists from my having received the note and the gun in a limited fashion and I therefore will charge as I have indicated and, as I would note, the defendants have indicated that they agree and do not object in any way to this supplemental charge.

Is that correct, gentlemen?

MR. MITCHELL: Yes.

MR. THAU: Those problems might be resolved if in light of what your Honor has said I would be permitted to move for a dismissal for Debra Green of Counts 2 and 5, and I so move at this time.

THE COURT: That matter was considered by me when I was making up the charge and I feel that at this juncture the note which she exhibited and which is in evidence against her is sufficient to make out a prima facie case.

MR. THAU: Sufficiently intimidating even if he had no gun?

THE COURT: Yes, I believe the note itself which says:

"This is a stickup. We have guns. I went all the money. Don't push no button" is sufficiently intimidating to constitute a violation.

MR. THAU: On Section (a), your Honor, but not of Section (d).

MR. REILLY: You are talking about the aiding and abetting charge with respect to Mrs. Green.

THE COURT: Are there any other requests for supplemental instructions?

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MR. THAU: I haven't any, your Honor.

MR. REILLY: No, your Honor.

MR. MITCHELL: No.

(In open court.)

THE COURT: Ladies and gentlemen, I am going to supplement my charge with the following:

In considering each of the three robberies you should consider only the direct and circumstantial evidence relating to that robbery in your consideration of the particular count on which you are then deliberating.

I would add that you will take the matter count by count and consider each defendant separately.

Is there anything further, gentlemen?

MR. REILLY: No, your Honor.

MR. MITCHELL: No, your Honor.

MR. THAY: No, your Honor.

THE COURT: Very well.

Jurors 1 through 12 are going to be placed in the custody of the Marshal in a moment or two. He will attend you throughout your deliberations and will be there to assist you with pencils and paper so that you may write whatever notes you wish to write. He will be outside of the jury room and if you will come out of the door you may communicate with him and then he will, in

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turn, communicate with the Court.

At this time I will ask Miss Kruger to swear the Marshal.

(Marshal sworn.)

THE COURT: Jurors 1 through 12 are directed to begin their deliberations. I suggest that if anyone has to use the facilities to do that first and then when all 12 of you are around the table I suggest at that point you begin your deliberations. I suggest that you discuss the case carefully and proceed count by count and discuss each defendant separately.

MR. THAU: May we approach the bench?

THE COURT: Yes.

(At the side bar.)

MR. THAU: I was concerned that their luncheon needs might have been forgotten.

THE COURT: No, they have not been. I will not discuss them at this time. I have made reservations for 1.15 for lunch. I'll send them in now. We'll see what happens during the next 25 minutes.

(In open court.)

THE COURT: Jurors 1 through 12 are directed to begin their deliberations. The alternate jurors are asked to remain here.

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Marshal, I put the jurors in your care and charge.

(The jury left the courtroom.)

(The alternate jurors were excused.)

THE COURT: Gentlemen, in the event the jury requests either a copy of the indictment or the exhibits which have been received in evidence, we will send them in upoin the consent of counsel. I would suggest that counsel remain here at all times, but, if you would, get the exhibits assembled so that they can be sent in.

MR. THAU: It might be advisable, perhaps, not to send Exhibits 8, which is the gun, together with 8-B, which are the three bullets. Sometimes deliberations can become quite acrimonious.

MR. REILLY: I have no objection to that as long as they are told that this will be exhibited to them in the courtroom and they are advised that it is not being sent in. I'm referring to the bullets.

THE COURT: If they ask for all exhibits we will indicate to them that thedse are all the exhibits except the bullets which are being retained in the courtroom.

(Pause.)

THE COURT: I have received a note from the

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jury which we'll mark Court Exhibit 1.

"I would like to hear the examination by the prosecutor of the witness Miss Yu."

They want, No. 2, evidence pictures and, three, they want the indictment.

I suggest that we bring them out right now.

The Court Reporter will read the examination of Miss Yu.

MR. THAU: Your Honor, considering that Defendants' Exhibit A falls within the purview of a picture or pictures, I would ask that it be included in a broad interpretation of the question. It does not say photograph.

THE COURT: I consider it a drawing.

MR. THAU: They might have said photographs. They said pictures. This is just as well within the definition of picture as a photograph is.

THE COURT: At this time I'm going to send in the indictment. I am going ot ask the reporter in the interim to locate Miss Yu's testimony in the record. Then I'm going to bring the jury in and have that read. I'm going to hand them the pictures and tell them that if there is anything else they want I am prepared to give it to them.

MR. THAU: That might not trigger their memory that there is --

THE COURT: I will even say "Such as this drawing," and I will have it with me.

MR. THAU: Could your Honor put to them whether by picture or pictures they meant both the photograph and the drawing?

THE COURT: If you wish I'll send in all the exhibits which are in evidence.

MR. THAU: I have no objection. To me a picture is a picture whether a photograph or written, a drawing.

MR. MITCHELL: I would give them only what they ask for.

THE COURT: Very well, then the first one is the indictment.

(Pause.)

THE COURT: I propose in response to the jury's note to send in to the jury the following exhibits:

Government's Exhibits 1-A, 2, 3, 4, and 5, and Defendants' Exhibit A in evidence.

Is that satisfactory to the Government?

MR. REILLY: Yes, your Honor.

THE COURT: Is that satisfactory to the

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defendants?

MR. THAU: Yes, your Honor.

MR. MITCHELL: Yes. Thank you.

(Jury present.)

THE COURT: Ladies and gentlemen, I have received your first note which I have had marked as Court Exhibit 1 for identification. The note has three parts to it.

Part 1 indicates:

"The jury would like to hear the examination by the prosecutor of the witness Miss Yu."

I have brought you back into the courtroom for that purpose. The Court Reporter has located the particular portions of the examination of Miss Yu and will read them as soon as I finish with the note.

Your second request was for evidence -- pics and that is what we sent in to you, the photograph -- negatives and also a drawing. If you should require any additional evidence, though, I know you will ask for it.

Finally you requested Item 3. We sent in a copy of the indictment for you. That would appear to cover your note. We will now turn to the Court Reporter's reading of the examination by the prosecutor of the witness Miss Yu.

(Record read.)

THE COURT: I propose at this time to send the jury to lunch. If any of you are unable to eat in the restaurant intself I'm sure they will make a place for you so if you have made anything you may bring it in with you and eat there, but I thought it would be convenient since the day is rather pleasant that you go out at this time.

Is that agreeable or does the jury have other wishes?

Counsel are excused until 2.30. The jury is turned back to the custody of the Marshal. You will proceed in a group to lunch and then return. The Court will be reconvened at 2.30 to await further inquiries from you.

(The jury left the courtroom.)

MR. THAU: I apparently poorly recalled Miss Yu's direct testimony. It had been my impression, which is now corrected by a rereading of the record, that she had testified to having read the contents or some of the contents of the note which allergedly was held by my client. Now it is clear that she did not testify to having read any part of the note but that with respect to the verbiage "This is a holdup," or something to that

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effect, she attributes that to spoken language by the male.

Under those circumstances, the import of Miss Yu's testimony is basically that two young blacks appeared before her, that the male spoke somewhat threatening words, the woman neither spoke nor exhibited anything which was threaten in nature. She spoke of a note but didn't say anything about its contents.

Under those circumstances I would move for a dismissal of Count 3 as against Debra Green because there is no evidence on that count concerning the contents of the note and absent any overt action on her part, absent language, which would show threats, there is really nothing against her on that count.

THE COURT: We heard the cross-examination which might have brought something out. Frankly, I know there was cross-examination of her. He only heard a portion of the testimony. At this time I'll hear from Mr. Reilly.

MR. REILLY: Your Honor, I think there is circumstantial evidence that the note was a holdup note. She looked at it and turned the alarm on. Just on the basis of the testimony referred to so far she clearly is guilty of aiding and abetting. She was there with Mr.

Green. She was supporting him in the transaction. I think under those circumstances she was guilty of assisting in the holdup of the bank.

MR. THAU: Absent a recital of what the note contained, how can Mr. Reilly call it a supporting note? He is inferring certain things which go beyond the permissible bounds here. Basically what this woman says is that these two people cam there, the male showed something; she showed a piece of paper. Then he said, "She's done it. She's pushed a button," or whatever, and they took off.

MR. REILLY: I'll add to that, your Honor, that my recollection is the same as Mr. Thau, that she said she looked at the note which said, "This is a holdup." I was surprised to hear the way the reporter gave it in the reading and I know it controls, but I wonder whether he would examine his notes again and whether we could hear that again.

MR. THAU: I don't debate the accuracy. As a matter of fact, I remember vividly going to Mr. Mitchell after that and asking him whether this lady had testified to the threatening words being in that note. I was relying on 3500 material which does suggest --

MR. REILLY: There was ample opportunity for

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cross-examination to clear up any doubt.

MR. THAU: I certainly wasn't going to bring that out.

THE COURT: I am not prepared, absent a hearing of all her testimony, to grant your motion at this time. I suggest that you would have an opportunity, if, as and when the jury finds your client guilty on this count to make or renew the motion.

MR. THAU: Yes.

THE COUFT: At this point I'm going to deny it because I haven't heard all the testimony. It is without prejudice to your renewing tne motion.

MR. MITCHELL: Can we be excused?

THE COURT: Yes, counsel and the defendants are excused. Would everyone please be back at 2.30.

(Recess.)

THE COURT: I have received a note from the jury which has been marked Court Exhibit 2 for identification. The note appears to be a request for evidence;

"One, evidence - demand note.

"Two, evidence - gun.

"Three, evidence - bullets.

"Four, evidence - holster."

I propose to send in Government's Exhibit 7 in

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evidence, which is the note, 8, 8-A and 8-B, which are the gun, bullets and the holster.

Is there any objection?

MR. THAU: No, your Honor.

MR. MITCHELL: No.

MR. REILLY: No.

THE COURT: Let the record reflect that the items are now being sent in to the jury room.

(Recess.)

THE COURT: I have received the following four notes from the jury. The first one, Court Exhibit 3 for identification says:

"Testimony of Churilla in reference to James' attire - specifically fur collar."

The next note, Court Exhibit 4 for identification reads as follows:

"Sorry! Cancel our last request."

Gentlemen, I regard these two notes as canceling each other out.

The next note, which is Court Exhibit 5 for identification, reads:

"Churilla's description of Debra A clothing, B, face. Also Churilla's identification of Debra in court."

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And the final one:

"Judge's charge concerning code of aiding and abetting. We need the rules, Title 18, U.S., Section 2113(a), (d), and 2."

The reporter has been able to locate the testimony wjich has been requested. Before bringing the jury out let us locate the portion of the charge which was referred to in the last note. I would propose that the statutes to which reference has been made be read and, in addition to that, that the portion of my charge on aiding and abetting be read.

The statutes are contained in Request No. 2 and the aiding and abetting portion in Request No. 10. Is there anyone who feels that any additional portions of the charge should be read to the jury in response to the last note, which is marked now Court Exhibit 6 for identification.

(Court Exhibit 6 was marked for identification.)

MR. REILLY: As I read the note, they ask for the rules governing those two statutes. The mere reading of the statute would be insufficient within the scope of this note, which appears to be asking what the elements are that would make out an offense under these

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statutes. I realize you would have to read a substantial part of the charge.

17 THE COURT: I would read them the portion on aiding and abetting. That appears to be what they are concentrating on. I would ask them at the end if they wish any more as to it.

(Jury present.

THE COURT: Good afternoon, ladies and gentlemen.

I have four notes which I have received from you since we were togeher last. There may have been more and we have sent exhibits in. In any event, I presently hold four notes. The first of them, which reque ted the testimony of Miss Churilla.

"In reference to James' attire - specifically fur collar"

was followed by a second note which says"

"Sorry! Cancel our last request."

I have met with counsel and we believe that those notes cancel themselves out.

Your third and fourth notes request:

"First, Churilla's description of Debra A - clothing, B, face. Also Churilla's identification of Debra in court."

I have asked the Court Reporter to select

portions of the testimony which we believe were requested by your note and he will read them in a moment or two.

Your final note covered my charge concerning aiding and abetting and you asked for the rules governing Title 18, United States Code, Sections 2113(a), (d) and 2.

I have asked the Court Reporter after he finishes reading the testimony to read those statutes that reference is made to here and to read to you the portion of my charge covering aiding and abetting. In the event after you have heard that portion of the charge you want further portions such as the elements of the crime, if when you retire to your jury room you send me a note I'll bring you out immediately to read anything else. I tried to limit the reading of the charge to what I thought was your specific request. But if I have erred on the side of brevity and you want to hear the elements of the various crimes, 1, 3, 3 and 4 as I gave them to you, just send me a note and we will continue with that material.

We'll proceed now to the testimony of the witness Miss Churilla regarding what you have asked for.

(Record read.)

THE COURT: Ladies and gentlemen, we have completed reading the portions of the testimony which we

believe you wanted tohether with the portions of the charge which we believe that you wanted. If you desire any additional testimony or if you desire any additional portions of the charge, we will be here awaiting a further note from you.

The jury is excused and instructed to continue their deliberations.

(The jury left thd courtroom.)

THE COURT: Gentlemen, I have just received a note from a juror who spoke with the Court in the presence of counsel yesterday afternoon, and I will read the note;

"Your Honor, yesterday I brought to your attention that because of my religious beliefs I had to be home by 8 p.m. I was told not to worry. At this point I am afraid that the jury might not reach a decision before 7 p.m., which is the absolute latest that I can leave. Could the Court please advise me?

"Judith Levy."

THE COURT: Gentlemen, I propose to respond to the note with a very brief response to Juror Levy:

"Do not worry."

I will sign it.

Is that agreeable to all?

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MR. REILLY: Yes, your Honor.

MR. THAU: It is to me.

MR. MITCHELL: Yes.

(Recess.)

THE COURT: I have Received a note from the jury, Court Exhibit 8 for identification:

"Dear Judge, is it permissible for us to ask for a magnifying glass which will be used in weighing the evidence?"

It is signed "The Forelady."

Does anybody have any objection to Miss Kruger sending a magnifying glass in to the jury?

MR. MITCHELL: No.

MR. THAU: No.

MR. REILLY: No.

THE COURT: Off the record.

(Discussion off the record.)

(Recess.)

THE COURT: Gentlemen, it is now approximately 6 o'clock. In view of the note from Juror Levy I have concluded not to continue the jury's deliberations beyond 6.45 this evening. Needless to say if the jury reports a verdict by that hour what I'm about to say will be academic.

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Assuming we reach that hour, I would be prepared to send in to the jury precisely at 6.45 or maybe even at 6.30 a note:

"Has the jury reached a verdict on any count or as to any defendant on any count? Yes or no."

Then if the answer was yes I would propose to bring the jury out and take a partial verdict and then send them home and direct that they return on Monday at 10 a.m. to continue their deliberations.

Mr. Thau, do you have any objections to that procedure?

MR. THAU: None at all.

THE COURT: Mr. Mitchell?

MR. MITCHELL: I object to that procedure.

THE COURT: Would you state your grounds, please?

MR. MITCHELL: I feel that if the jury decides on all the counts they may change their mind while they are deliberating, as has happened before Judge Stewart recently. I feel that in order to protect the defendant there should be no taking of a verdict until they reach a verdict on all counts or are in position to state that they have reached them on some eventually but can't reach a verdict on the others, but I would object to taking a

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partial verdict.

THE COURT: Mr. Reilly?

MR. REILLY: Mr. Mitchell's position seems to be inconsistent with the supplemental instruction he asked your Honor to give, that the jurors consider only the evidence with respect to each particular count. It would seem to me if they reach a determination as to one count they obviously wouldn't be influenced with respect to any other count by that evidence and, vice versa. In any event, the Government has no objection to your procedure, your Honor, since it is the sensible one.

MR. THAU: If the weight or the passion with which one either goes along with your proposal or opposes it is going to have any bearing here -- at first I said I have no objection. I urge it strongly. Let's put it that way.

THE COURT: I will overrule Mr. Mitchell's objection.

I will now prepare a note which we will hold until 6.30. Before sending the note in I will read it to counsel to see if it is agreeable.

(Pause.)

THE COURT: Gentlemen, I have drafted the following note:

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"Members of the jury, has the jury reached a verdict as to any defendant on any count? Please answer yes or no."

Recognizing your objection, Mr. Mitchell, is the note as such satisfactory as to form?

18 MR. THAU: It is to me.

THE COURT: Mr. Mitchell, reserving your objection, do you now find the note satisfactory as to form?

MR. MITCHELL: As to form, yes.

THE COURT: Mr. Reilly?

MR. REILLY: Satisfactory as to form, your Honor.

THE COURT: Very well. I will date it June 18, 1976 at 6.30 p.m. We will send it in then.

(Recess.)

THE COURT: Gentlemen, it is 6.30. I suggest that I send the following note in to the jury:

"June 18, 1976, 6.30 p.m.

"Members of the jury, has the jury reached a verdict as to any defendat on any count? Please answer yes or no.

"Judge Ward."

Is that satisfactory?

MR. THAU: Yes, sir.

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THE COURT: As to form with your objection remaining, Mr. Mitchell.

MR. REILLY: Satisfactory to the Government.

(Recess.)

THE COURT: We have received a note from the jury which we will mark as the next Court exhibit.

"Dear Judge;

"We would like to hear the entire testimony of Churilla by prosecutor and defense. Thank you, the jury."

Would you mark this as the next Court exhibit.

I suggest that at this point, it being 6.30, that that testimony would take a sufficiently long time so that we should await a response to the note, because I don't believe that our reporter could read the testimony in half an hour and we have the problem with Juror No. 10, Mrs. Levy. So if it is agreeable to you all we'll wait to see if there is any response.

(Pause.)

THE COURT: We have received a response:

"Yes."

It is my intention in view of that to bring the jury out, have Miss Kruger check their attendance, ask the Forelady if the jury has reached a verdict as to

any defendant on any count and if she says "Yes" to ask as to whom, and if she gives a name, to ask as to what count or counts, and then to inquire as to the verdict.

Is that a satisfactory procedure?

I recognize, Mr. Mitchell, you have an objection to taking a partial verdict. I'm concerned now with the procedure and if anyone has a better one I'll hear him.

MR. THAU: The procedure is satisfactory to me, your Honor.

MR. REILLY: Satisfactory to the Government.

THE COURT: Very well.

MR. REILLY: Can we ask that the Marshal bring the evidence in as well?

THE COURT: Yes, because it is my intention to send the jury home. Perhaps after we have heard their verdict we can have a brief side bar and determine from the verdict what we will do.

At this time, Miss Kruger, before we bring the jury in I would ask you to mark the last response from the jury, the single sheet of paper with the word "Yes" as a Court exhibit and I will ask the Marshal at this time to bring in the jury.

(Jury present.)

(Jury roll taken; all present.)

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THE CLERK: Madam Forelady, has the jury reached a verdict as to any defendant on any count?

THE COURT: Madam Forelady, has the jury reached a verdict on any defendant as to any count?

THE FORELADY: Yes, we have.

THE CLERK: Which defendant, or both?

THE FORELADY: James Melvin Green.

THE COURT: On what count or counts has the jury reached a verdict with regard to the defendant James Melvin?

THE FORELADY: Count 1, Count 2, Count 3, Count 4 and 5.

THE CLERK: Madam Florelady, what is your verdict as to the defendant James Melvin Green as charged in Count 1, guilty or not guilty?

THE FORELADY: Guilty.

THE CLERK: Count 2?

THE FORELADY: Guilty.

THE CLERK: Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded:

You say you find the defendant James Melvin Green guilty on all five counts and so say you all.

THE COURT: Mr. Mitchell, would you wish the jury polled?

MR. MITCHELL: Yes, your Honor.

THE COURT: At this time, ladies and gentlemen, Miss Kruger will inquire of each of you whether the verdict as it stands recorded, the verdict finding the defendant James Melvin Green guilty on all five counts, is your verdict. If you would, answer yes if it is and no if it isn't.

Miss Kruger will poll the jury.

(In answer to the question "Is that your verdict?" all jurors answers in the affirmative.)

THE COURT: Madam Forelady, has the jury reached a verdict with regard to the defendant Debral Fennell Green on any count or counts?

THE FORELADY: Yes.

THE COURT: With reference to which counts has the jury reached a verdict on the defendant Debra Fennell Green?

THE FORELADY: Counts 3, 4 and 5.

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THE COURT: As I understand it, the jury has not reached a verdict with respect to the defendant Debra Fennell Green on Count 1 and Count2; is that correct.

THE FORELADY: That is correct.

THE CLERK: Madam Forelady, what is your verdict as to the defendant Debra Fennell Green as charged in Count 3?

THE FORELADY: Guilty.

THE CLERK: Count 4?

THE FORELADY: Guilty.

THE CLERK: Count 5?

THE FORELADY: Guilty.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it now stands recorded:

You say you find the defendant Debra Fennell Green guilty on Counts 3, 4 and 5, and so say you all.

THE COURT: Mr. Thau, do you want the jury polled?

MR. THAU: If you please, your Honor.

THE COURT: Ladies and gentlemen, we are going to inquire of each of you whether the verdict as it stands recorded against Debra Fennell Green, the verdict of guilty on Counts 3, 4 and 5, is your verdict.

(In answer to the question "Is that your verdict?" all jurors answered in the affirmative.)

MR. THAU: At this time, your Honor, the defendant Debra Fennell Green moves for a mistrial as to Counts 1 and 2.

THE COURT: I would suggest we move to the side bar. If the jury will please wait I will confer with counsel very briefly.

(At the side bar.)

MR. REILLY: Your Honor, if your Honor grants a mistrial at this time the Government will interpose no objection.

(In open court.)

19 THE COURT: The motion for a mistrial made by defendant Debra Fennell Green on Counts 1 and 2 is granted.

The jury is discharged with the thanks of the Court. I would like to take this opportunity to speak with you for a moment before you leave.

This jury, like the great majority of juries with which I deal carried out its duties in a conscientious fashion. All I ask of jurors is to do justice as they see it, take their good consciences into the jury room and when they leave the jury room and leave the Courthouse,

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take their good consciences with them.

I believe this jury has done what they believe was right to do. I never tell a jury whether I agree or disagree with their verdict, but I do tell them as they leave whether I consider that they have been diligent and conscientious. It is my opinion that this jury has been diligent and conscientious.

The jury is discharged with the thanks of the Court.

Thank you.

(Jury discharged.)

THE COURT: I am prepared to hear any motions which counsel would wish to make at this time.

MR. THAU: May we reserve motions for the day of sentence?

THE COURT: You may.

MR. THAU: Thank you.

MR. REILLY: We have an application at this time to have both defendants remanded.

THE COURT: They are presently in custody, as I understand it. They are subject to a warrant, as I understand it, from the State of New Jersey.

MR. REILLY: That is correct.

MR. THAU: The District of New Jersey.

MR. REILLY: I would not like the District of New Jersey to be penalized through a misunderstanding. I would ask that remand due to this conviction be entered now.

THE COURT: The application of the Government for remand of Debra Fennell Green and James Melvin Green is granted.

Does the Government wish to make any disposition at this time of Counts 1 and 2 as they relate to Debra Fennell Green?

MR. REILLY: We would prefer not to at this time.

THE COURT: Very well.

The Court will set a date for sentence. Mr. and Mrs. Green will remain in custody so I think we should set a date approximately four weeks from now.

MR. MITCHELL: Your Honor, I don't know what your plans are, but I won't be available until the first week in August.

THE COURT: Let us see what the schedule is.

Mr. Thau, what is your schedule?

MR. THAU: I expect to be trying a few cases here and there. When I'm on trial, as your Honor knows from having seen me run around, I can generally handle

mcs

matters at 4.30 and 9.30. August would be difficult but in a pinch I could have someone stand in for me.

THE COURT: I'm thinking of Tuesday, August 3.

MR. MITCHELL: Yes.

MR. THAU: Fine.

THE COURT: Is that satisfactory to the Government?

MR. REILLY: Yes.

THE COURT: The sentencing of James and Debra Green is set down for Tuesday, August 3 at 9.30 a.m. in Courtroom 35, which is where I expect to be sitting in August. The defendants are remanded.

Anything further?

MR. REILLY: No, thank you.

MR. MITCHELL: Thank you.

MR. THAU: Thank you.

I (We) hereby certify that the foregoing is a true and accurate transcript to the best of my (our) skill and ability from my (our) stenographic notes of this proceeding.

Official Court Reporter
U. S. District Court

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REILLY, AUSA

United States of America vs.

United States District Court for

DEFENDANT: JAMES MELVIN GREEN

the SOUTHERN DISTRICT OF NEW YORK

DOCKET NO. 76 Cr. 517

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 9 DAY 14 YEAR '76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Robert Mitchell, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, by force, violence and intimidation, taking and attempting to take moneys and property from certain banks and assaulting and putting into jeopardy the life of other persons by the use of a dangerous weapon. (T. 18, U.S.C., Secs.2113(a) and 2)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY (20) YEARS on count 1; TWENTY (20) YEARS on count 3 and TWENTY (20) YEARS on count 4. Said sentences on counts 3 and 4 to run concurrently with the sentence imposed on count 1.

Imposition of Sentence on count 2 is Suspended and defendant is placed on probation for a period of ONE (1) DAY; Imposition of Sentence on count 5 is Suspended and defendant is placed on probation for a period of ONE (1) DAY. Said periods of probation to be consecutive to term of imprisonment imposed on counts 1,3 and 4, subject to the standing probation order of this court.

SPECIAL CONDITIONS OF PROBATION

Defendant to receive credit for time served in Federal custody in connection with sentence here imposed.

REMANDED pending appeal.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

MURDEL M

SEP 2 [illegible]

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

ROBERT J. WARD

Date 9/14/76

U.S. DISTRICT COURT FILED SEP 14 1976 S.D. OF N.Y.

REILLY, AUSA

United States of America vs.

United States District Court for the SOUTHERN DISTRICT OF NEW YORK

DEFENDANT: DEBRA FENNELL GREEN

DOCKET NO. 76 Cr. 517

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: 9 DAY: 16 YEAR: '76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL [ ] (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a ~~Finding~~/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY. to counts 3, 4 and 5.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, by force, violence and intimidation, attempting to take moneys and property from banks, deposits of which were insured by the Federal Deposit Insurance Corporation and assaulting and putting into jeopardy the life of another person by the use of a dangerous weapon or device. (T. 18, U.S.C., Secs. 2113(a) and 2)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for ~~imprisonment~~ treatment and supervision on counts 3 and 4 pursuant to 18, U.S.C., 5010(b) until discharged by the United States Parole Commission as provided by 18, U.S.C., Sec. 5017.

Imposition of Prison Sentence on count 5 is Suspended and defendant is placed on probation for a period of ONE (1) DAY following her release from confinement.

Defendant is given credit for time already served.

Counts 1 and 2 are dismissed on motion of defendant's counsel with the consent of the government.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

SEP 21 1976

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT FILED SEP 16 1976 S.D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

ROBERT J. WARD

Date 9/16/76

UNITED STATES DISTRICT COURT

Southern Dist of NY

USA

-v-

James Melvin Green

Docket Number 76 Cr 517

Hon Robert J Ward
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that James Melvin Green appeals to the United States Court of Appeals for the Second Circuit from the ☑ Judgment ☐ order ☐ other (specify) _____ entered in this action on 9/14/1976.
(Date)

Robert J Mitchell
(Counsel for Appellant)

Address 51 Chambers Street
New York, N.Y.
10007

Phone Number WO-2-0675

Date 9/24/76

To: Robert B Fiske Jr
U.S. Attorney
Southern Dist.
of New York.

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE

☐ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

Prepare transcript of
☑ Pre-trial proceedings
☑ Trial 6/14 to 6/15/76
☑ Sentence 9/14/76
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☑ CJA Form 21

ATTORNEY'S signature Robert J Mitchell DATE 9/24/76

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

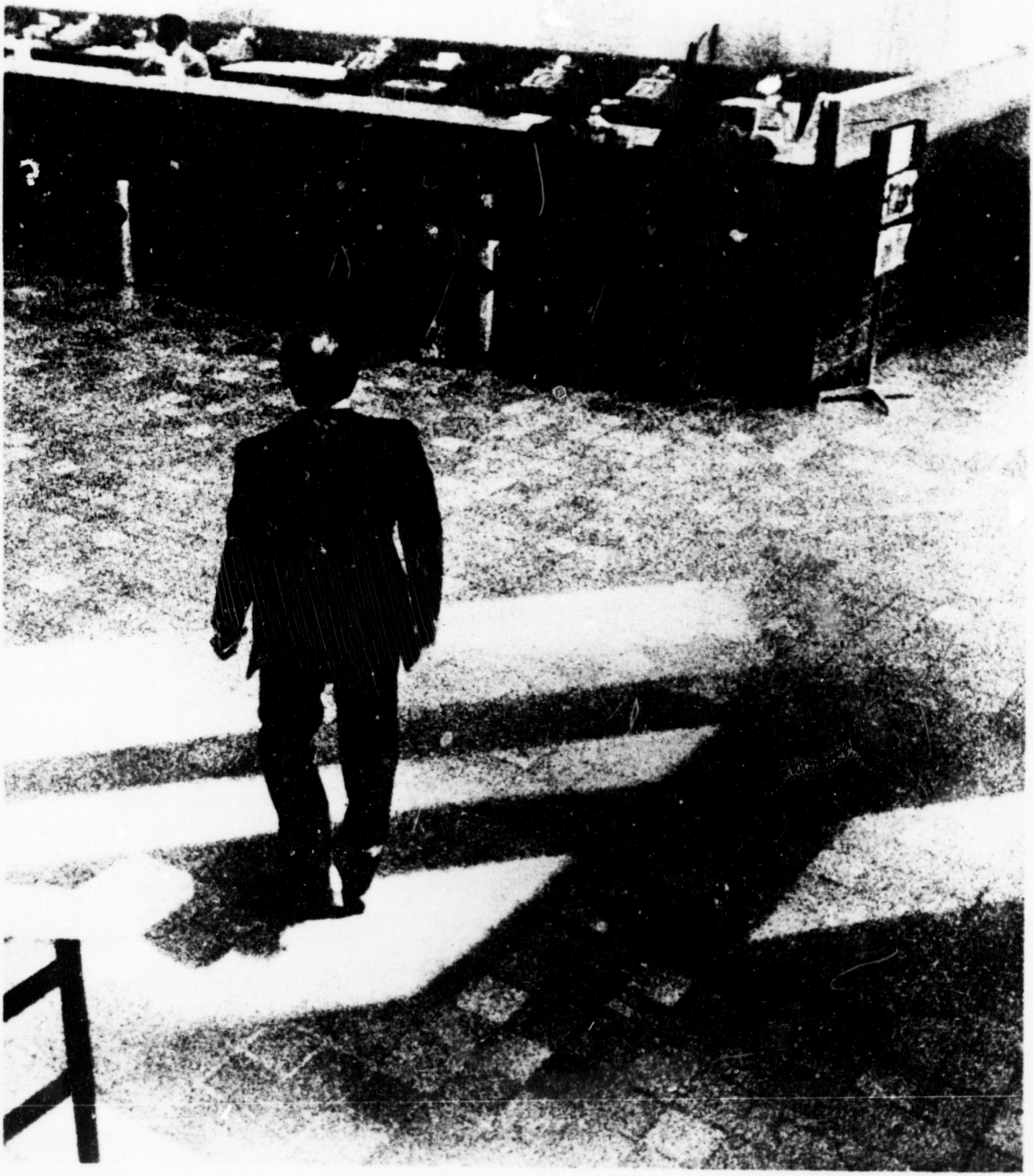
Date _____ Signature _____
(Court Reporter)

ORIGINAL

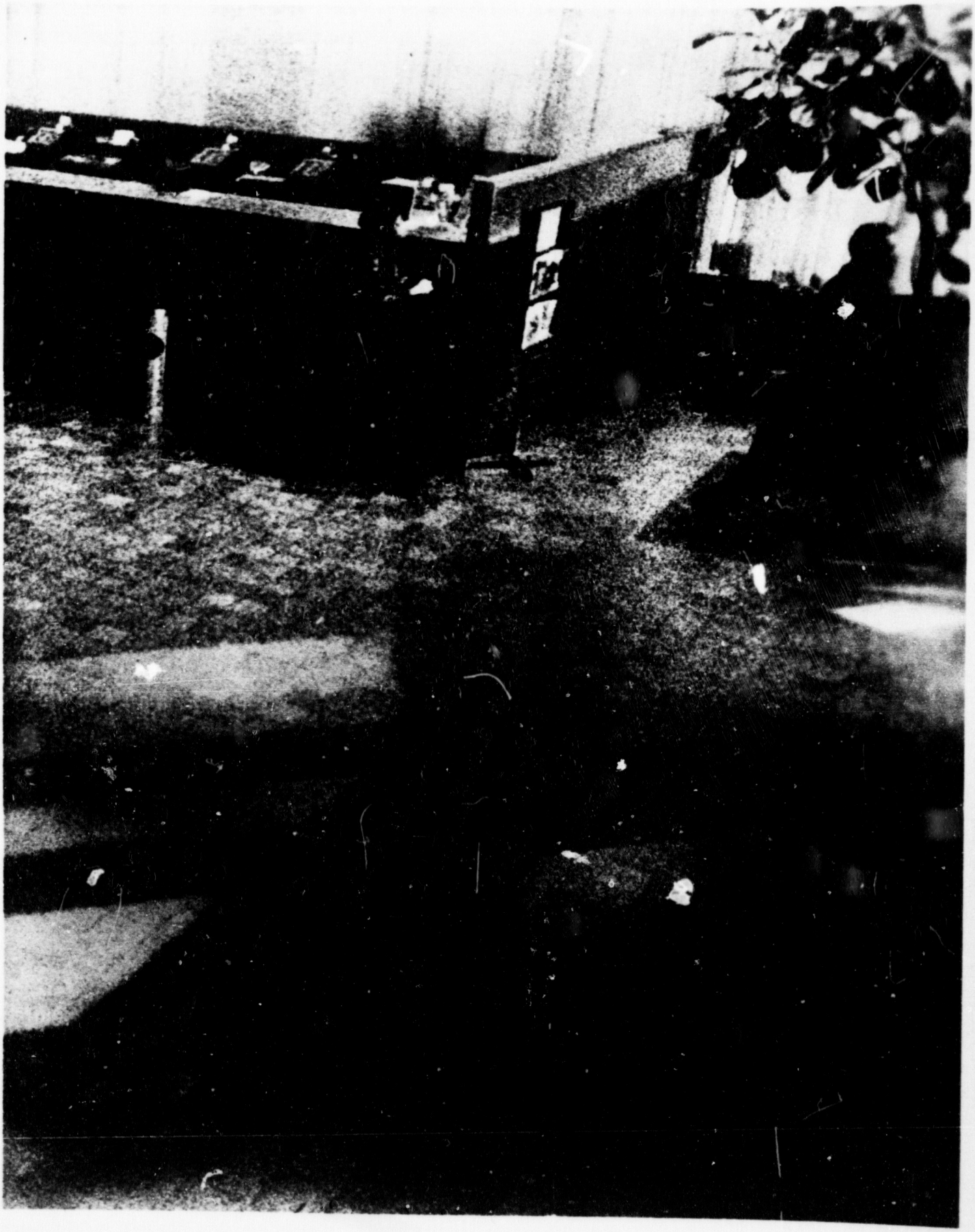
DOOR

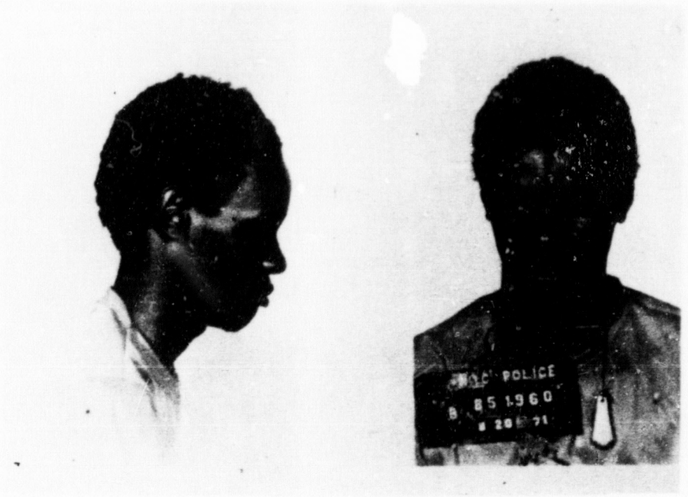
A772 (GX-1a)

A773 (GX-2) (HX-8)



A774 (GX-3) (HX-9)

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ESSEX COUNTY N. J.
J75-9477
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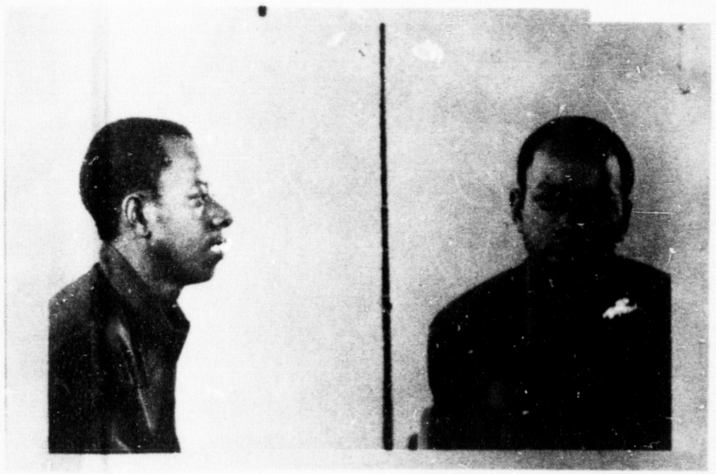
JOHN W. CRYAN



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Terry Johnson
n/m/n
5'8" 195 stocky
1½" scar left hand
FBI # 780643

M-91-17072-1A9

71-12623

M-91-17072-1A9

STANLEY WALKER 2

M-91-17072-1A9

James Melvin Greg

Charles Rivera 3-5-76
Peter White 3/5/76
Charlene Chenelle 3/5/76

M-91-17072-1A9

M-91-17072-1A9

M-91-17072-1A9

M-91-17072-1A9

4/21-10616

A776

Lloyd G. Gilpin

M-91-17072-147

01-13620

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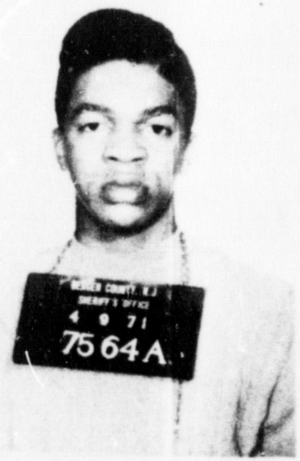
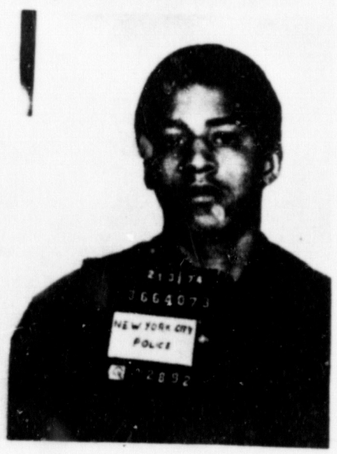
M-91-17072-149

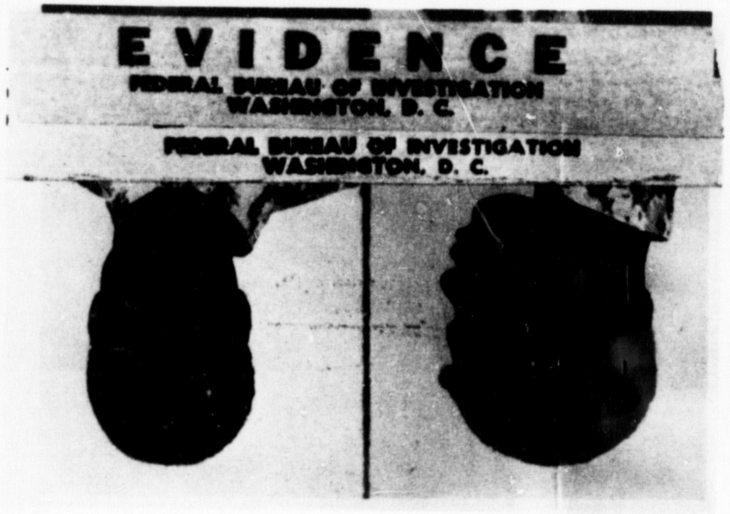
91-9076

M-91-17072-149

Tyrone Jones



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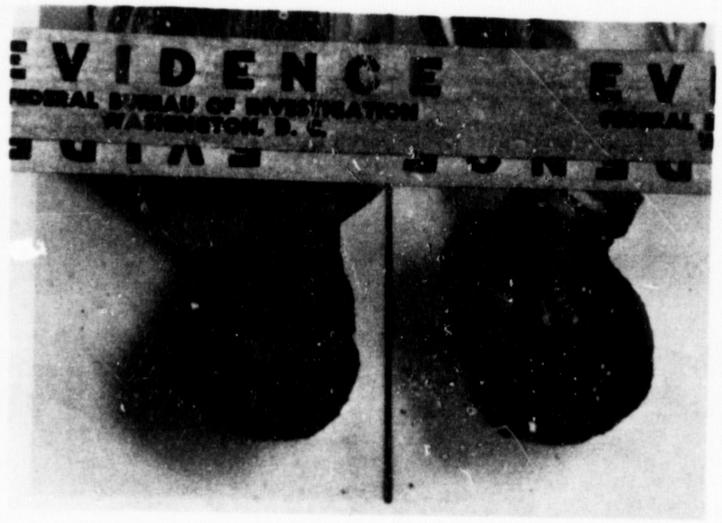
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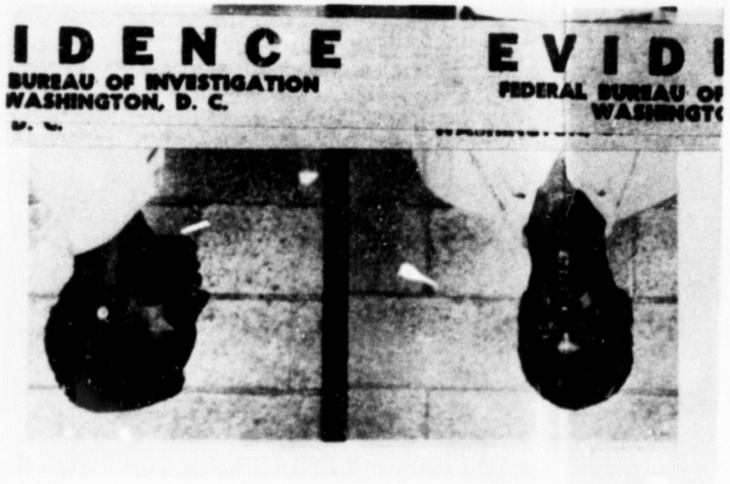
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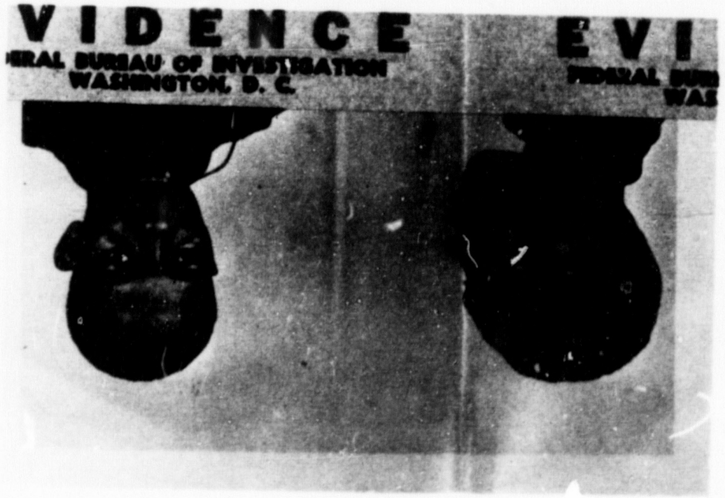
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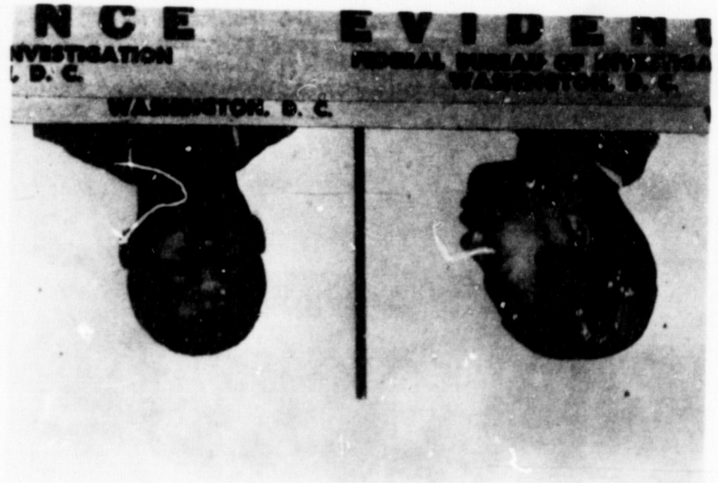
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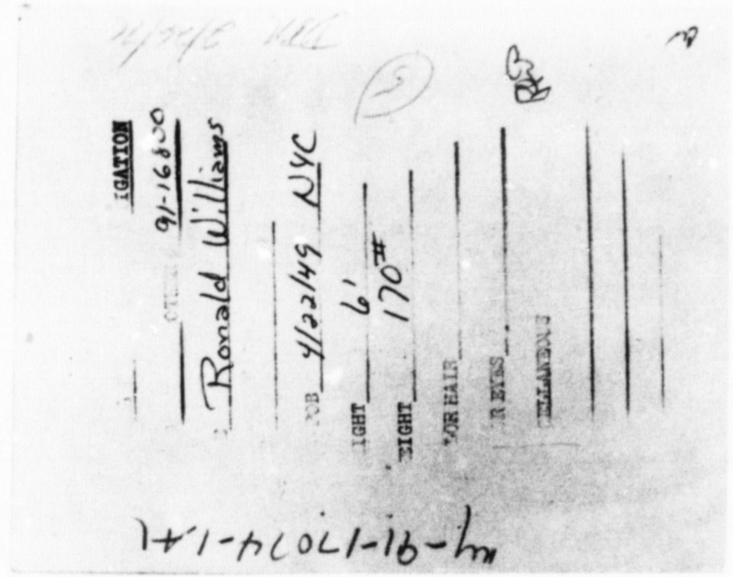
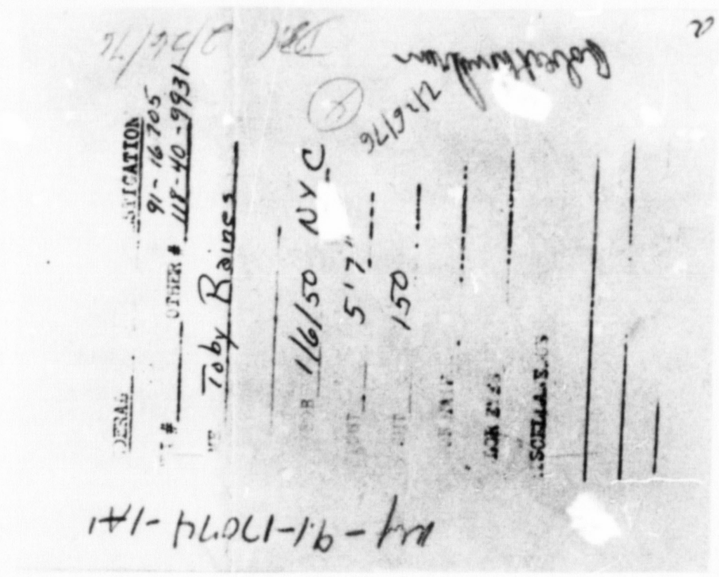
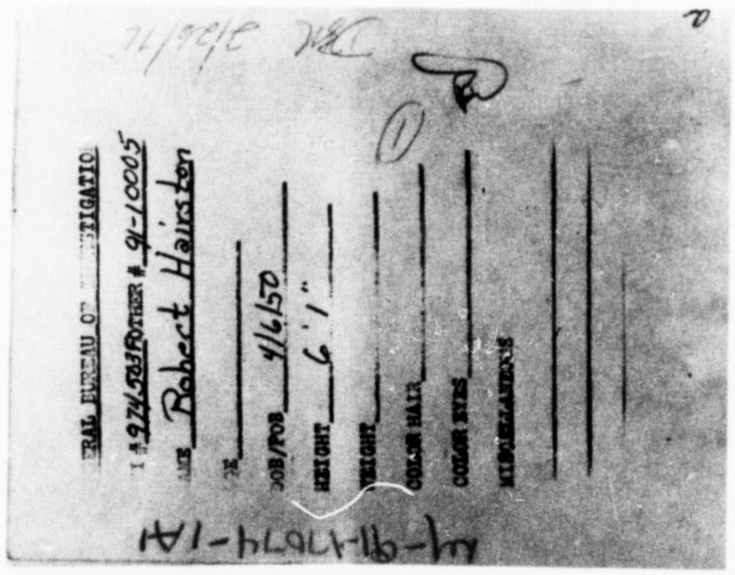
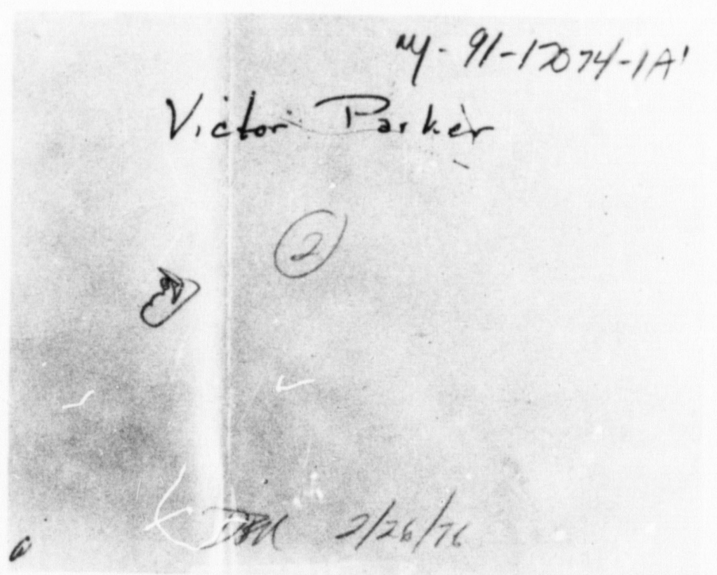


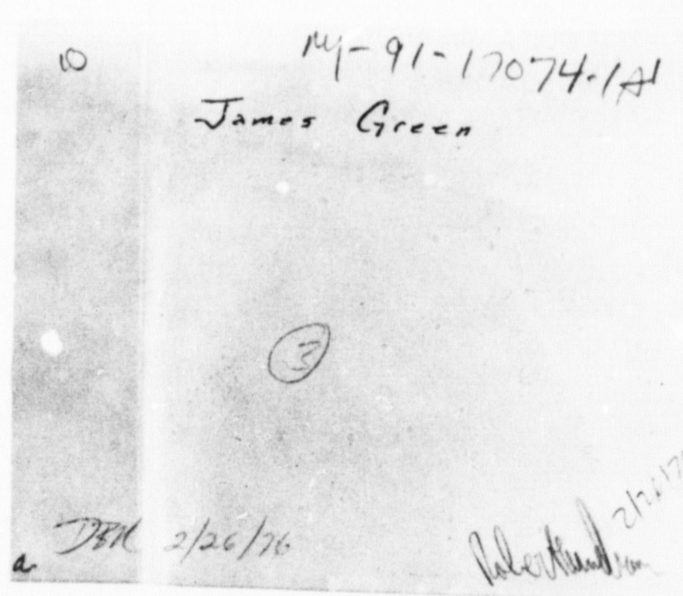


Larry Hammond
B 6704480
91-16007
MY-91-17074-1A1

DBK 2/26/76







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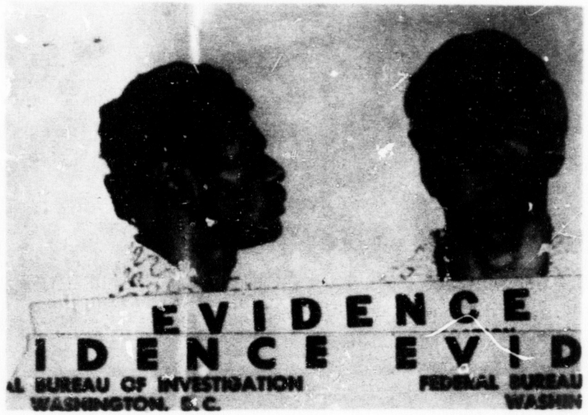
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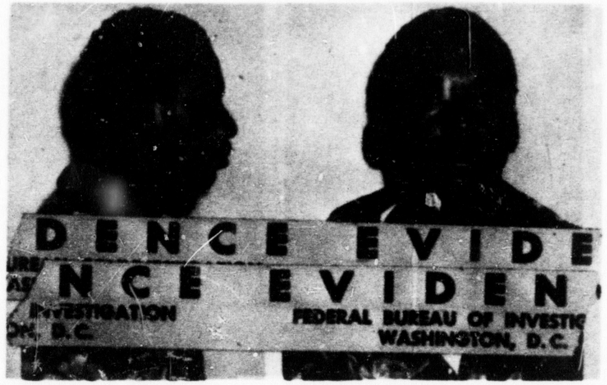
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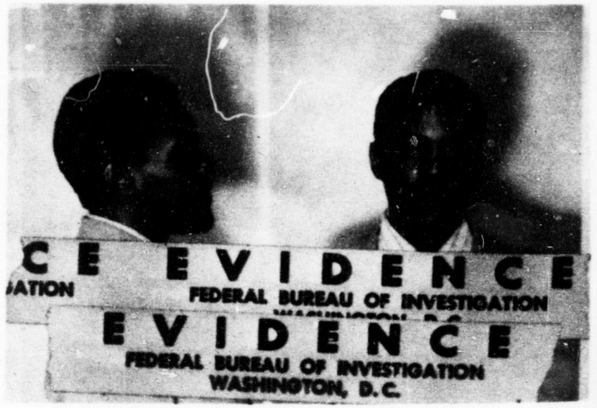
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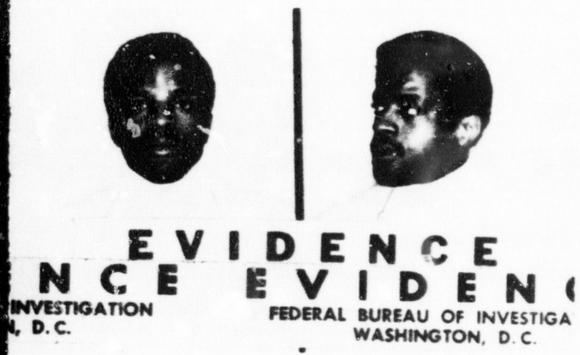
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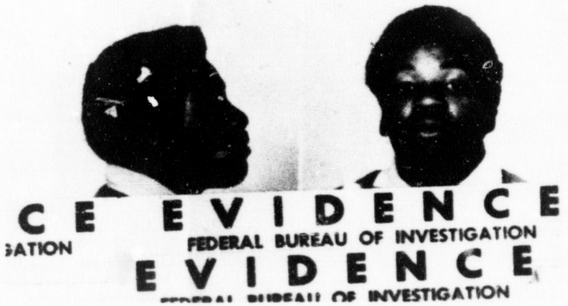
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Tyrone Jenkins
FBI # 211-959A
3/19/76
MJ-91-1707A-14

Paul Robert Cowan, Jr.
FBI# 788 666 F
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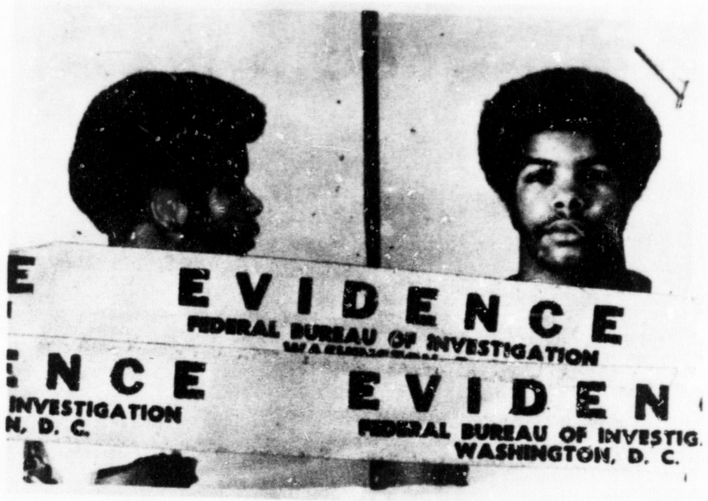
26-65460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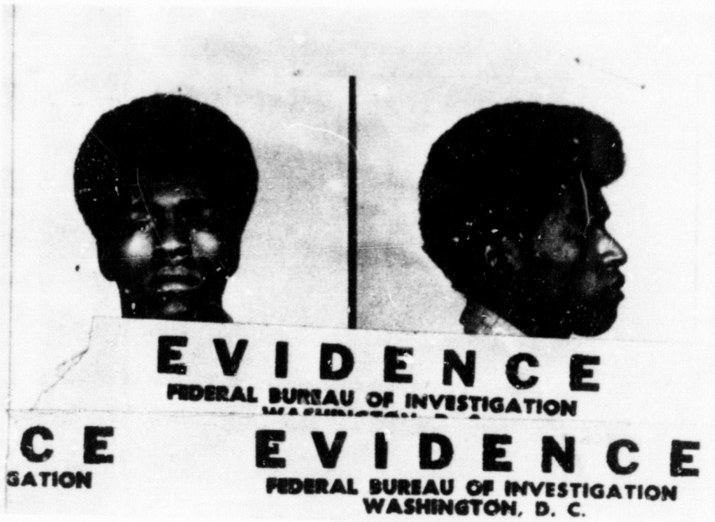
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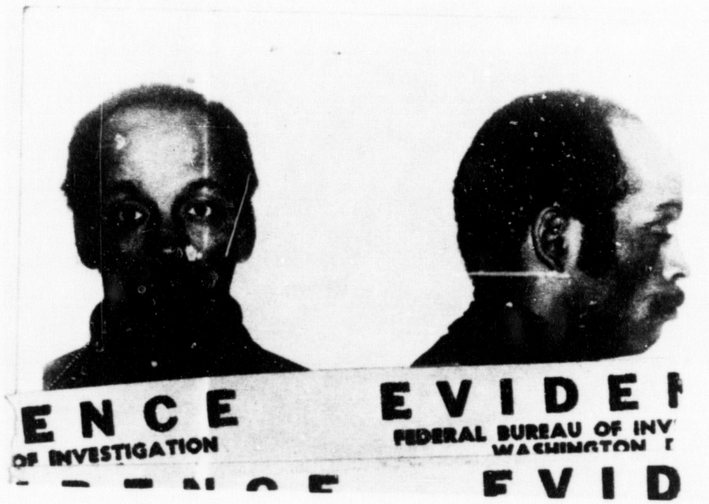
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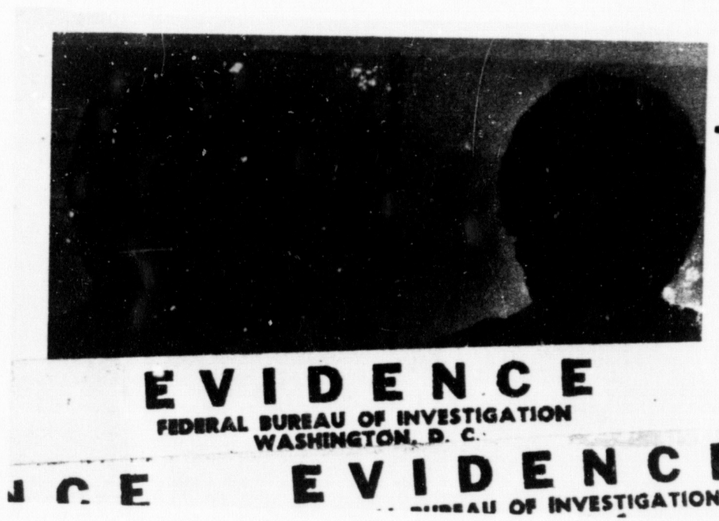
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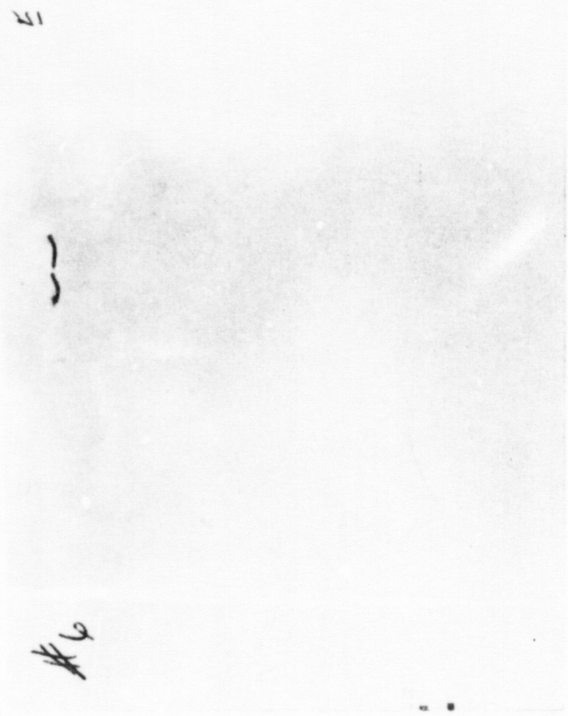
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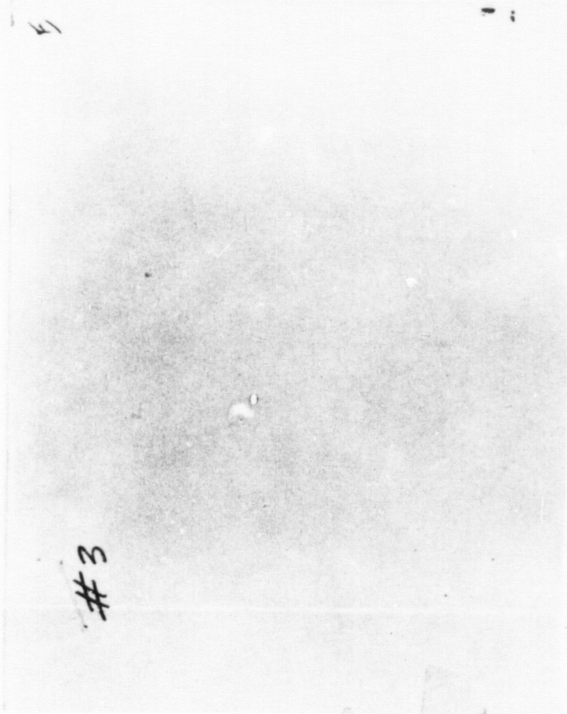
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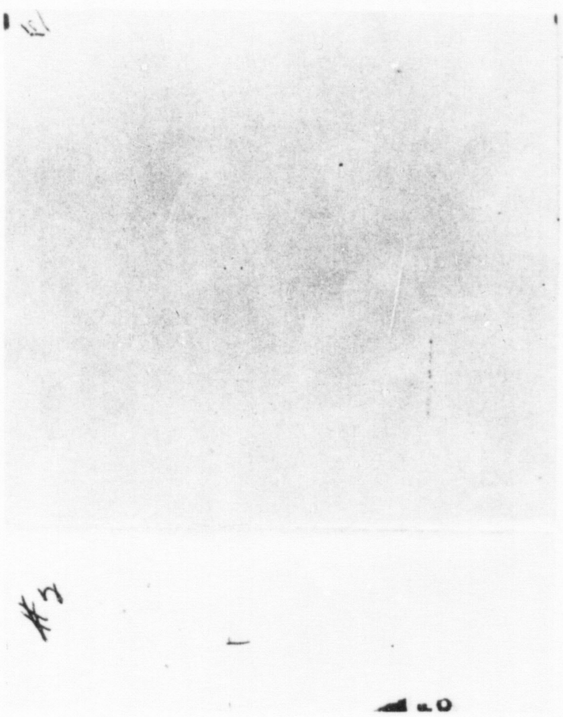
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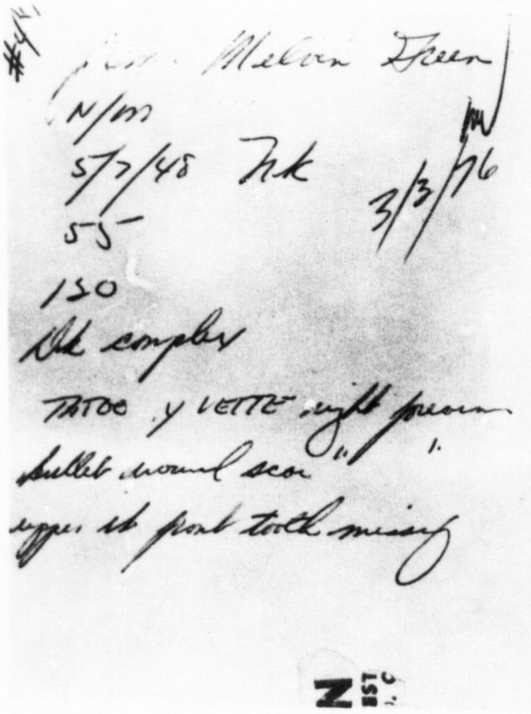
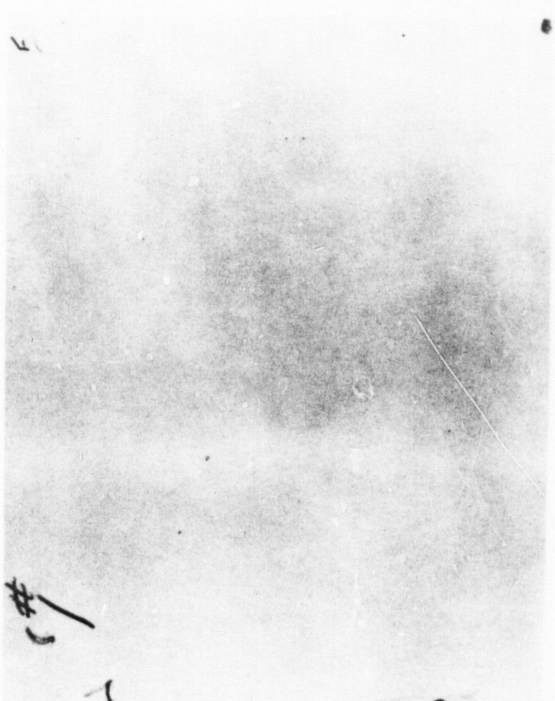

#4
Melvin Green
N/m
5'7/48 Blk
3/3/76
5'5"
130
Old complex
TATOO "Y LETTER" right forearm
bullet wound scar
upper rt front tooth missing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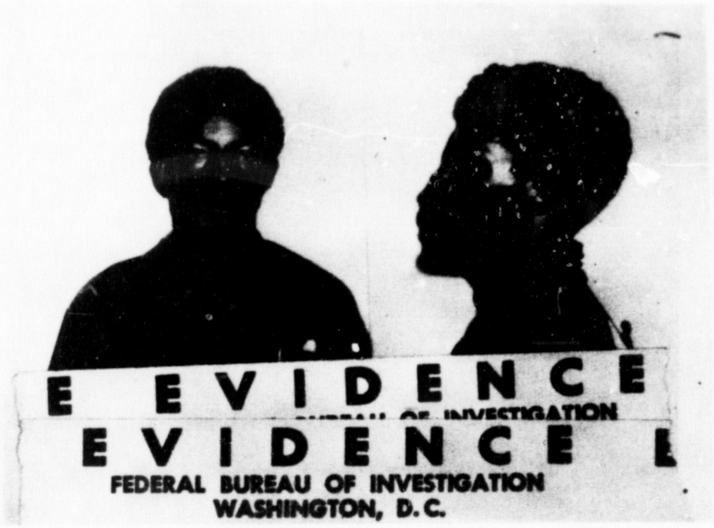
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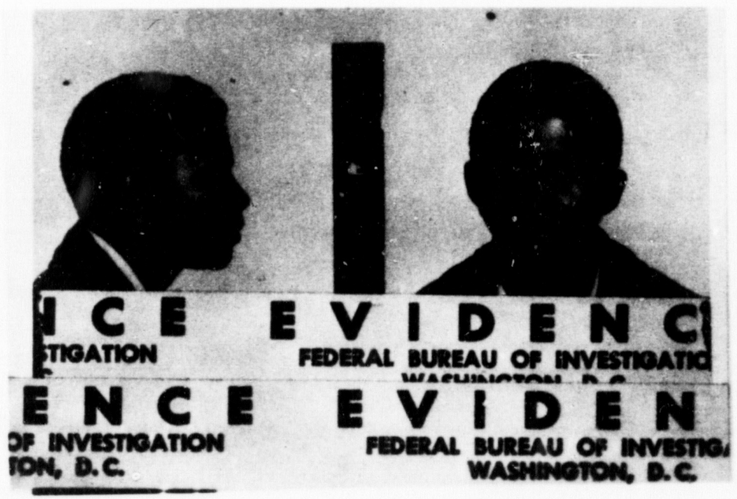
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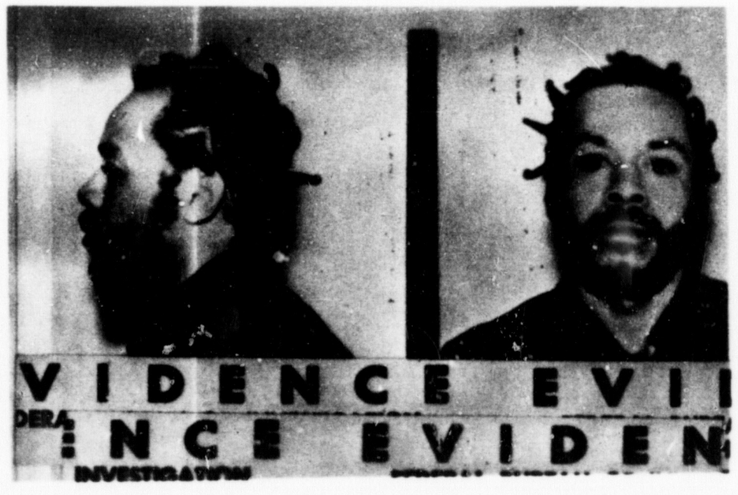
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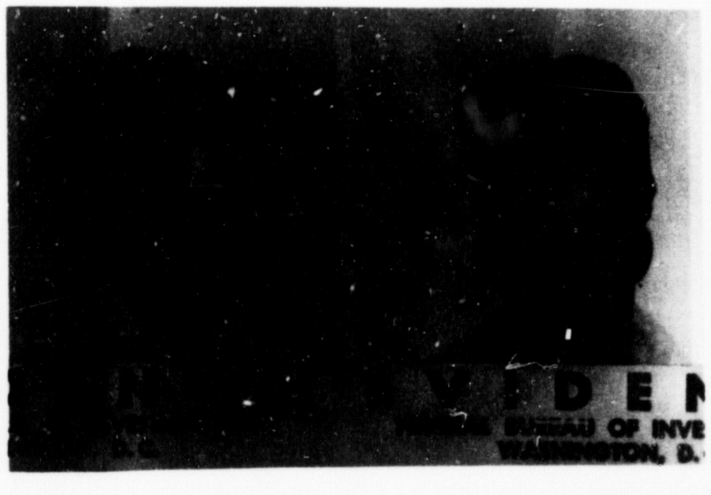
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BUREAU OF INVE
WASHINGTON, D.

NY 91-17104-1A1

F

...STIGATION

...Tyrone Jenkins

...B/DOB 2/18/47 Meridian, Miss.

...EIGHT 5'7"

...IGHT 170#

...Black

...Brown

(4)

3/19/76

91-16182
Alvin Thomas McSwain
335 432 G

NY 91-17104-1A1

(5)

3/19/76

Joseph Copeland
91-15760

NY 91-17104-1A1

(6)

3/19/76

NY 91-17104-1A1

F

...STIGATION

...Joseph Seabron

...B/DOB 2/23/54 Halifax County NC

...EIGHT 5'5"

...IGHT 146 #

...Black

...Brown

(1)

3/19/76

NY 91-17104-1A1

...th

Bryson Elvin Harris
February 4, 1950
New York, New York
267 West 140th Street
Apartment 7
Five feet, six inches
146
Black
Brown

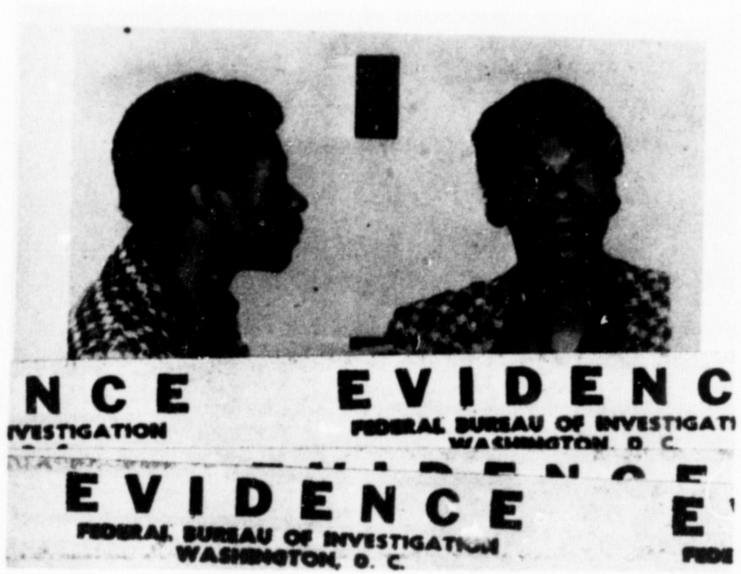
...ity Account Number 121-40-2268

3/19/76

James Melvin Green
NY 91-17104-1A
FBI 713056 F

(3)

3/19/76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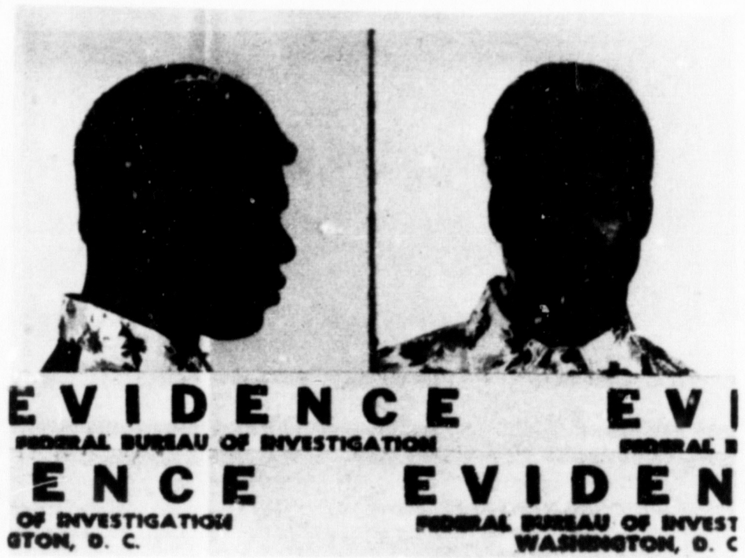
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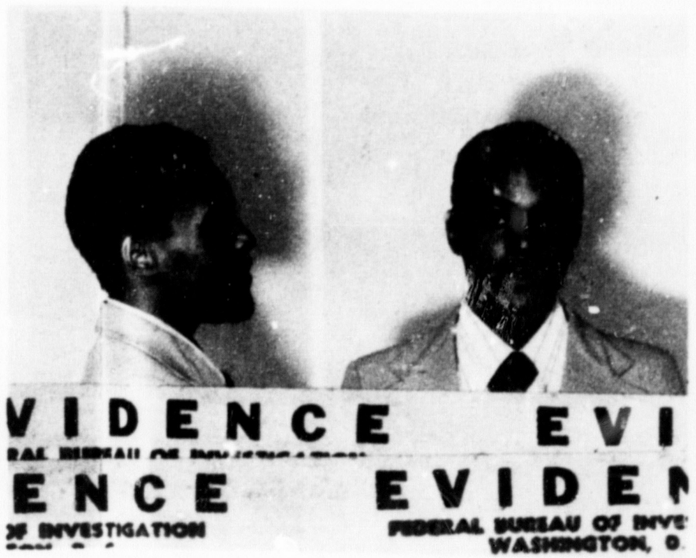
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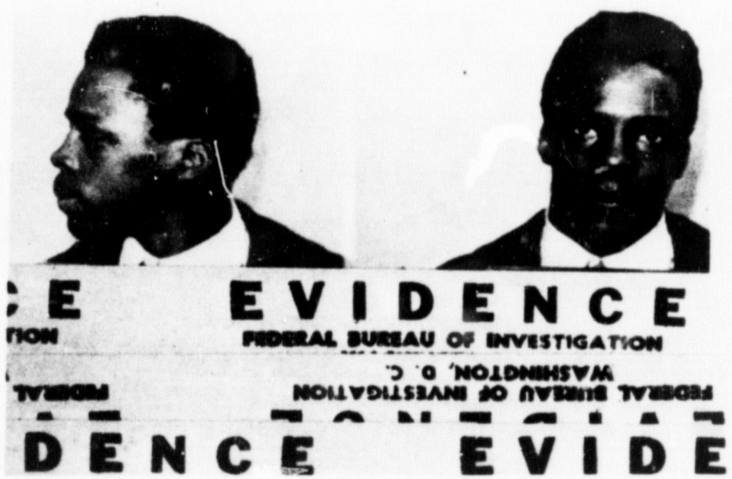
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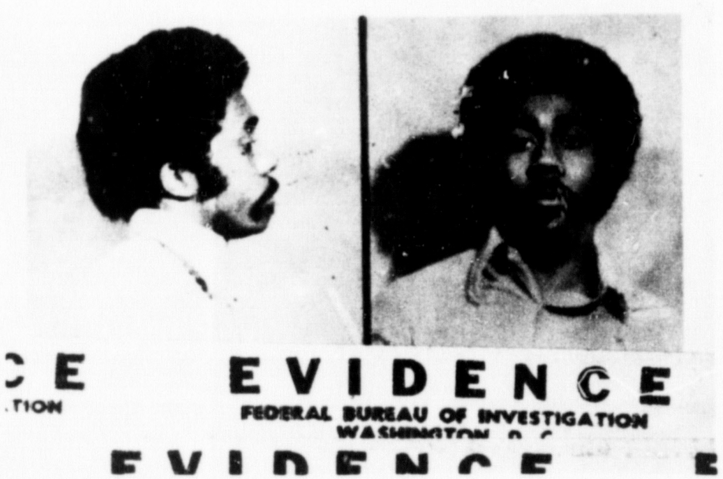
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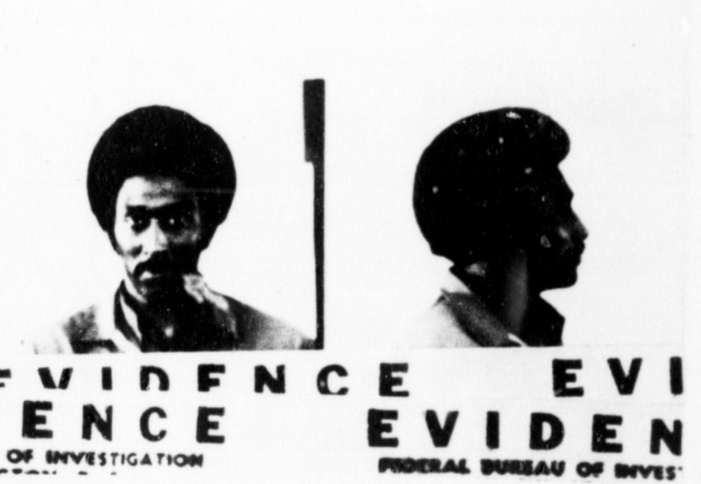
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Franklin Bowie

(4)

DRM 4/2/76

NY 91-17109-1A2

Donald Williams

(1)

(2)

DRM 4/2/76

NY 91-17109-1A2

LARRY Hammond
NIM
6' 2" 185
1/14/51 NYC
24 yrs

(2)

DRM 4/2/76

NY 91-7109-1A2

James McBride Green

(3)

DONALD R MORRISEY 4/2/76

NY 91-17109-1A2

Donald Miles

(5)

DRM 4/2/76

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